

**CHARLOTTE PLANNING COMMISSION
SUBDIVISION REVIEW
RECONSIDERED AND RESTATED FINDINGS OF FACT AND DECISION**

Gill Barlow

**Final Plan Application for a Boundary Adjustment between 4100 and 4190 Mount Philo Road
Application # PC-18-162-BA**

Introduction and Procedural History

This proceeding involves the review for the Reconsideration of a Boundary Adjustment submitted by Gill Barlow for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The original (pre-Reconsideration) application was received by the Planning and Zoning Office on September 13, 2018. A notice of public hearing was hence published in "*The Citizen*" newspaper on October 11, 2018. A hardcopy of the notice was mailed to all adjoining landowners and was further posted at the following three locations: the Town Office bulletin board, the Brick Store, and Spear's Corner Store on October 5, 2018. An electronic notice of the hearing was posted on the Town website meeting calendar.

This application proposes to adjust acreage between the adjoining properties located at 4100 and 4190 Mount Philo Road (both owned by the applicant). However, the preceding Sketch Plan Review (**PC-17-139-SK**) also proposed a 2-Lot Subdivision of the (approximate 10-acre) 4100 Mount Philo Road property (i.e. Lot 2) to be part of the application. This Sketch Plan Review letter was issued by the Planning Commission on December 7, 2017 after one public hearing, which took place on November 2, 2017. The Planning Commission also attended a site visit at the property beforehand on Saturday October 28, 2017 at 9:00 AM. Attendees of both the site visit and the hearing included Commissioners: Peter Joslin (then Acting Chair), Charlie Pughe, Dick Eastman, Marty Illick, and Gerald Bouchard. Additional participants included the applicants Gill Barlow and Molly McClaskey; and neighbors Gary Pittman and Michael Russell (who represented the neighbor of the northern abutting parcel, Jill Wolcott).

At their March 1, 2018 meeting, the Planning Commission reviewed a response letter from the applicant (dated January 12, 2018) requesting detailed changes to the November 2, 2017 meeting minutes and to their Sketch Plan Review letter. The Planning Commission hence clarified the guidance pertaining to the placement of the driveway and re-issued the Sketch Plan Review letter, thereby extending its currency for an additional six-month period starting March 16, 2018.

When the final application for **PC-18-162-BA** was submitted on September 13, 2018, the subdivision proposal was not included and only the Boundary Adjustment portion remained. This change may have been the genesis of some confusion with respect to the requirement of building envelopes for which the applicant has contested in this Reconsideration proceeding.

The initial Boundary Adjustment application was considered by the Planning Commission at a public hearing held on November 1, 2018 at approximately 7:05 PM. Present at the public hearing were the following members of the Planning Commission: Peter Joslin (Chair), Gerald Bouchard, Richard

Eastman, Charlie Pughe (Vice-Chair), Marty Illick, David Kenyon, and Shawn Coyle. Additional participants and attendees included: the Town Planner; the applicants Gill Barlow and Molly McClaskey; neighboring property-owners Jill Wolcott and Louis Lavin; and others. The hearing was closed that evening and a decision was issued on December 14, 2018 (i.e. **PC-18-162-BA**) approving of the Boundary Adjustment.

On January 11, 2019, the Charlotte Planning and Zoning Office received a letter from the applicant(s) Gill Barlow and Molly McClaskey requesting a Reconsideration of the Findings of Fact and Decision as per Section 9.9(E)(4)(b) of the 2016 Land Use Regulations, claiming that the prior decision was *"induced by fraud, surprise, error or oversight, or that an unintended negative consequence will result"*. The request was heard at the Planning Commission meeting on January 17, 2019 where a motion was approved to reopen the public hearing to reconsider the decision on March 7, 2019.

A subsequent notice for the public hearing was published in *The Citizen* newspaper on February 14, 2019. Hardcopy notices were posted at the Town Office Building, the Brick Store, and Spear's Corner Store on February 8, 2019. Electronic notice was also posted on the Charlotte Town website calendar. The notice of the reconsideration was mailed out to all known adjoining landowners and interested parties that participated in the November 1, 2018 public hearing. The Reconsideration was heard at the Planning Commission meeting held on March 7, 2019 at 7:30 PM and was attended by Commissioners: Peter Joslin (Chair), Charlie Pughe (Vice-Chair), Gerald Bouchard, Shawn Coyle, David Kenyon, and Marty Illick. Additional participants included the Town Planner, Gill Barlow, and Molly McClaskey.

Exhibits

The following exhibits were submitted for the application:

1. Completed application form signed by Gill Barlow on September 12, 2018;
2. Letter of Request from Gill Barlow & Molly McClaskey to Planning Commission to reconsider decision PC-18-162-BA (dated: January 4, 2019 / received by Planning & Zoning: January 11, 2019);
3. Legal Opinion from Town Attorney, David W. Rugh: "Legal Opinion re: Building Envelopes for Boundary Adjustments" (received on April 12, 2019);
4. Proposed survey map: "Boundary Line Adjustment – Property of Gill Barlow – 4100 & 4190 Mount Philo Road – Charlotte, VT" (dated August 31, 2018) by Rebecca Gilson, No. 109314, Civil Engineering Associates, Inc., South Burlington, Vermont;
5. Letter from Molly McClaskey & Gill Barlow to Planning Commission Re: "November 2, 2017 Sketch Plan Meeting – Application Number PC-17-139-SK – Comments on Sketch Plan minutes and Planning Commission Sketch Plan Review letter" (dated: January 12, 2018 / received by Planning & Zoning: January 16, 2018);
6. Sketch Plan Review: Planning Commission Letter (PC-17-139-SK Barlow), dated March 16, 2018 (Revised item 4 from December 7, 2017);

7. Planning Commission Decision (**PC-18-162-BA** Barlow); Final Plan Application for a Boundary Adjustment between 4100 and 4190 Mount Philo Road, final signature added on December 14, 2018 (Charlotte Land Records - Volume 236, Pages 55-58 – recorded December 14, 2018);
8. *Map Slide 15, Book 3, Page 30*; Survey - “Property of Caroline Doane” to convey 10.05 acres to Gill & Dorothy Barlow (dated: 15 Nov 1978 / Revised 14 Dec 1978) by Charlies R. Dunham, No. 216, Civil Engineering Associates, Inc., Shelburne, Vermont;
9. Charlotte Land Records – Volume 71, Pages 13-14 (July 13, 1992) View Easement (and “Plan-View Easement” map, dated April 10, 1992) *“to enable the present and future Owners of Parcel 2 develop and maintain a view over the lands of Parcel 3 by cutting trees on the lands of Parcel 3 and controlling the location of structures within . . .”* granted by Caroline V. Doane; Volume 59, Pages 427-434 (June 2, 1989) Conveyance of 13.43 acre Parcel No. 1 from Doane to Barlow, notwithstanding certain protective covenants contained in a prior deed; Volume 36, Pages 93-96 (December 13, 1978) Conveyance of 10.01 acre Parcel No. 2 from Doane to Barlow, with covenants: *“1. No lot may be subdivided, nor shall any duplex, commercial apartment building or the like be erected on any lot. 2. Each lot shall only be for residential purposes. No building, dwelling or any other structure shall be erected on any lot., 3. No house trailers or mobile homes of any kind shall be allowed on or erected on any lot. These covenants do not have an expiration date.”*; Volume 28, Pages 332-332A (November 29, 1963) Conveyance of 34.61 acre parcel from Davis to Doane (with map);
10. Planning Commission Minutes from meeting held on November 2, 2017; November 1, 2018; January 17, 2019; and March 7, 2019;

Regulations in Effect

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Findings

Background

1. Gill Barlow owns two adjoining properties located at 4190 Mount Philo Road (**Lot 1**; to the south) and 4100 Mount Philo Road (**Lot 2**; to the north) within the Rural Zoning district (RUR).
2. This application (scaled down from what was proposed within the *PC-18-139-SK* Sketch Plan Review) proposes to adjust acreage from **Lot 2** to **Lot 1**, where: **Lot 1** changes from 13.338 acres to 13.293 acres, and **Lot 2** changes from 9.956 acres to 10.001 acres.
3. The Reconsideration hearing for the Boundary Adjustment decision PC-18-162-BA (approved by the Planning Commission on February 1, 2018) was accepted and subsequently warned to address the decision’s conditions relating requirement of building envelopes for **Lot 1** and **Lot 2**.
4. The applicant based the Reconsideration on the basis that *“the prior decision was induced by fraud, surprise, error or oversight, or that an unintended negative consequence will result”*.

7.2 General Standards - Areas of High Public Value

1. Primary Agricultural Soils (Prime and Statewide - PAS): About 7.7 acres of the central portions of both parcels comprise Primary Agricultural soils, according to the *USDA Natural Resources Conservation Service (NRCS)* GIS database.
2. Steep Slopes (>=15%): The western half of both properties are within sloped areas of 15-25% and Greater than 25% slope.
3. Wildlife Habitat: *Significant Forest Habitat* exists in the western wooded portion of both parcels, comprising about half of **Lot 1**, and 2/3 of **Lot 2**. An area of about one (1) acre of *Significant Linkage Habitat* exists along the western property boundary of **Lot 1**, where 0.4 acres exists along the northeastern property boundary of **Lot 2**.
4. Water supply source protection areas (SPAs) – The entirety of the parcel falls within the surface water source protection area for the Champlain Water District.
5. Scenic Views and Vistas: Mount Philo Road is classified as a “*Most Scenic Public Road*” within the Charlotte Town Plan.

7.2(E) General Standards – Building Envelopes

“All proposed lots intended for development shall include designated building envelopes within which all structures and parking areas shall be located, unless waived in accordance with Section 6.2. The size and shape of each building envelope shall be established in accordance with these regulations, including all applicable standards under this chapter and the district. The Commission also may require the identification of specific building footprints if such information is needed to determine conformance with these regulations.”

1. The existing lots do not have any designated building envelopes, nor does the proposed survey indicate the creation of any building envelopes for **Lot 1** or **Lot 2** (see **Exhibit 4** above).
2. The Planning Commission had advised the applicant during the Sketch Plan Review (see **Exhibit 6** above) that building envelopes should be created to protect the *Significant Forest Habitat* on the western wooded portion of the property. However, this advice was based on the fact that the Sketch Plan Review originally proposed a subdivision, which was not retained in the current application.
3. Because Boundary Adjustments are reviewed under the Chapter 7 *Subdivision Review Standards* of the Regulations, the Planning Commission felt the creation of building envelopes was appropriate, as it is their duty for any application to make lots more conforming whilst they are under review. This played out into a disagreement in the interpretation of wording of the Regulations; particularly with the term “*Proposed Lot*”, where the applicant(s) interpreted their lots as existing (not proposed), because they are not being ‘created’ as part of a Subdivision.
4. As part of this Reconsideration, the Planning Commission sought a legal opinion from the Town Attorney to clarify the interpretation, which stated:

'The language of Section 7.2(E) speaks of requiring building envelopes for "all proposed lots intended for development." While a boundary line adjustment is defined as a subdivision, it does not propose a new lot; instead, it simply adjusts boundaries on existing lots. If building envelopes are to be imposed as part of boundary line adjustments, more clear language should be used, perhaps "all lots involved in a proposed subdivision, including boundary line adjustments." Furthermore, where there is ambiguity in the language of the regulations, the Regulations should be construed in favor of the landowner.'

5. The Planning Commission therefore rescinds the previous condition of PC-18-162-BA requiring the creation of building envelopes for **Lot 1** and **Lot 2**.

Decision

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Boundary Adjustment 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 submit a letter from the surveyor indicating that he or she has set (or reset) the survey pins in the field as indicated on the survey.

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 Environmental Division of the Vermont Superior 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 November 1, 2018: Peter Joslin (Chair), Gerald Bouchard, Richard Eastman, Charlie Pughe (Vice-Chair), Marty Illick, David Kenyon, and Shawn Coyle.

Members Present at the Public Hearing for Reconsideration of PC-18-162-BA on March 7, 2019: Peter Joslin (Chair), Charlie Pughe (Vice-Chair), Gerald Bouchard, Shawn Coyle, David Kenyon, and Marty Illick.

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

1. Signed: Gerald A Bouchard For / Against Date Signed: 4/18/2019
2. Signed: Maria E D For / Against Date Signed: 4.18.19
3. Signed: [Signature] For / Against Date Signed: 4/18/19
4. Signed: [Signature] For / Against Date Signed: 4.18.19
5. Signed: [Signature] For / Against Date Signed: 4.18.19
6. Signed: _____ For / Against Date Signed: _____
7. Signed: _____ For / Against Date Signed: _____