

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

**Jason and Tiffany Hutchins; and Vern and Rachael Hutchins
Final Plan Application for a 2-lot Minor Subdivision and 3-Lot Minor Subdivision Amendment for
285, 328, and 363 Riverview Drive
Application # PC-20-19-SD**

Introduction and Procedural History

This proceeding involves the review of an application for a 2-Lot Minor Subdivision and 3-Lot Minor Subdivision Amendment submitted by Jason Hutchins for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as “the Regulations”). The application was received on February 4, 2020. Electronic notice was posted on the Charlotte Town website calendar. Hardcopies posted at the following three locations: the Town Offices at 159 Ferry Road, the Old Brick Store in the West Charlotte Village, and Spear’s Corner Store in the East Charlotte Village during the week of February 21, 2020. A notice of the public hearing was published in The Citizen newspaper on February 13, 2020.

A site visit was conducted at the property on Saturday October 19, 2019 at 6:30 PM, two days after the initial Sketch Plan Review (PC-19-179-SK) held at the Planning Commission meeting at 7:00 PM on October 17, 2019. Attendees of the site visit included: Commissioners Jim Faulkner, Charlie Pughe, Gerald Bouchard, Peter Joslin, and property-owner Jason Hutchins. At the hearing, the Commission classified your project as a 1998-continued “Planned Residential Development (PRD)” and a “2-Lot Minor Subdivision / 3-Lot Minor Subdivision Amendment”. A Sketch Plan Review letter was subsequently sent to the applicant Jason Hutchins on December 6, 2019.

The application was considered by the Planning Commission at the public hearing held on March 5, 2020 at approximately 7:15 PM. Present at the public hearing were the following members of the Planning Commission: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Gerald Bouchard, Marty Illick, Dave Kenyon, and Shawn Coyle. Additional participants and attendees included the Town Planner and the applicant Jason Hutchins, and others.

Exhibits

Application Exhibits for the proposed development included:

1. Completed application form signed by Jason, Vern, and Rachael Hutchins received on February 4, 2020;
2. Proposed draft survey map(s): “Subdivision & Boundary Line Adjustment Plat – of Lands Owned by Jason R. & Tiffany L. Hutchins and Lands Owned by Vernon C. Hutchins, Jr. & Rachael M. Hutchins – Carpenter Road & Riverview Drive – Town of Charlotte, County of Chittenden, State of Vermont” (dated: 2020) by Kitteridge Land Surveying, PLLC, Vergennes, Vt. (Sheet 1 - entire subdivision, and Sheet 2 - indicating detail of Lot 6);
3. Sketch Plan Review; Planning Commission Letter (PC-19-179-SK Hutchins), dated December 6, 2019;

4. *Map Slide 113, Clip 3, Page 21; Survey - "Final Plat – Major Subdivision – Property of Vernon C., and Rachel M. Hutchins - Charlotte, Vermont"* (dated Feb 1998) by Stuart J. Morrow (No. 565), Shelburne, Vermont;
5. *Map Slide 99, Volume 11, Page 94; Survey - "Plat of Subdivision Modification – Property of Vernon C. Jr. and Rachel M. Hutchins and Daniel M. and Holly A Boardman – Charlotte, Vermont"* (dated June 1995 / Revised 08-95) by Stuart J. Morrow, L.L.S. (No. 565), Civil Engineering Associates, Inc., Shelburne, Vermont;
6. *Map Slide 79, Book 10, Page 23; Survey - "Subdivision Plat – Vernon C. & Rachel M. Hutchins Jr. – Off Carpenter Road – Charlotte, Vermont"* (dated 27 March 1989 / Revised 3 May 1990) by Kenneth W. Pinkham (No. 203), Pinkham Engineering Associates, Inc., Burlington, Vermont;
7. *Town of Charlotte – Planning Commission: Final Plat approval; In Re: Application of Vern and Rachael Hutchins, Riverview Drive, Charlotte – Findngs of Fact and Notice of Decision*, Signed by Albert Moraska, Planning Commission Chair: 18 August 1998;
8. *Town of Charlotte – Planning Commission: Preliminary Plat approval; In Re: Application of Vern and Rachael Hutchins, Riverview Drive, Charlotte – Findngs of Fact and Notice of Decision*, Signed by Albert Moraska, Planning Commission Chair: 5 May 1998;
9. *Wastewater System and Potable Water Supply Permit (Case Number: WW-138-1322 *Corrected*) – Mark & Jamie Charlson, Vernon C. Hutchins, Jr., and Mark S. Delisle, 639 Carpenter Road and 363 and 285 Riverview Drive, Charlotte, VT 05445 (Approved March 14, 2014);*
10. *Charlotte Land Records – Volume 238, Pages 265-268 (15 Jul 2019) Warranty deed – conveyance of Lot 1 – 8.3 acres from Delisle to Hutchins, J. & T.; Volume 212, Page 256 (17 Mar 2014) Act 250 permit amendment for #4C0959-2; Volume 100, Pages 89-91 (20 Jul 1998) Act 250 permit amendment for #4C0959-1 to allow a 3-lot subdivision; Volume 100, Pages 53-56 (15 Jul 1998) Subdivision water supply & wastewater permit amendment for Lot 5, #EC-4-1431-2; Volume 100, Pages 496-497 (8 Jul 1998) Warranty deed – conveyance of Lot 5 – 5.61 acres from Hutchins, V. & R. to Hutchins, J.; Volume 85, Pages 195-202 (24 May 1995) Water and Roadway agreements; Volume 85, Pages 192-194 (24 May 1995) Subdivision water supply & wastewater permit amendment for Lot 1, #EC-4-1431-1; Volume 85, Pages 190-191 (24 May 1995) Quit claim of easement deed; Volume 61, Pages 326-328 (21 Nov 1989) Subdivision water supply & wastewater permit amendment for Lot 1 and Lot 2, #EC-4-1431; Volume 56, Pages 461-464 (22 Jul 1988) Warranty deed – conveyance of 63 acre parcel from Marcotte, E. & L. to Hutchins, V. & R.;*
11. *Planning Commission Minutes from meetings held on *March 5, 2020; October 17 and November 7, 2019; and August 4 and 18, July 21, May 5, and April 7, 1998;**

Regulations in Effect

Charlotte Town Plan, 2019

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Findings

Background

1. Jason and Tiffany Hutchins own adjoining **Lot #1** (8.3 acres) and **Lot #5** (5.61 acres), and Vern and Rachael Hutchins **Lot #4** (10.03 acres), which are each located on Riverview Drive within the Rural Zoning district (RUR).
2. This application proposes to:
 - A: Subdivide **Lot #1** into two parcels, creating a 2.4 acre **Lot #6**.
 - B: Adjust a 3.72 acre portion of **Lot #1** into **Lot #5**.
 - C: Adjust a 0.62 acre portion of **Lot #4** into **Lot #5**, reducing **Lot #4** to 9.41 acres.
 - D: As a result of the two boundary adjustments, **Lot #5** would increase to 9.95 acres and **Lot #1** would decrease to 2.18 acres.
3. According to the 1998 Planning Commission minutes (see **Exhibit 10**) and the resultant Preliminary and Final decisions (see **Exhibits 7 and 8**), the subdivision was classified as a Planned Residential Development (PRD) with a deferred open space requirement that remains to be fulfilled for the property:

“Open Space shall be required for any future new lots and shall be calculated for the entire 33.5 acres based on a minimum of 15% to 50% of the original 33.5 acres.”
(~ 1998 Preliminary decision)

“Open space areas are to be clearly shown on the Final Survey Plat and there shall be no structures, except agricultural fencing, outside the depicted building envelope areas without review and approval by the Planning Commission as a Subdivision Modification.”
(~ 1998 Final decision)

The PRD standards within the 2016 Regulations would require a minimum fifty-percent (50%) of the 33.5 acre 1998 subdivision (i.e. 16.75 acres) to be designated in an open space agreement with the Town as part of the subdivision application (see **Finding 8.4**, below).

3.2 Road, Driveway and Pedestrian Access Requirements

A: At Sketch Plan Review (see **Exhibit #3**), it was recommended that the existing driveway that accesses **Lots #4** and **#5** should be modified to avoid having pass-thru traffic occur across the newly created **Lot #6**, or fragment the pasture of **Lot #4**. The modified driveway should adhere to **Section 3.2(D)(2)** of the Regulations, where:

“(c) Roads and driveways should be located to avoid fragmentation of and/or adverse impacts to areas of high public value listed in Table 7.1. Additionally, to the extent feasible, roads should follow existing linear features such as utility corridors, tree lines, hedgerows and fence lines.”

The proposed driveway does not further fragment the pasture of **Lot #4**.

B: All roads, driveways, and intersections shall be designed and constructed in accordance with the Town of Charlotte *“Recommended Standards for Developments and Homes”* (adopted September, 1997), state:

1. "All driveways 500' or more in traveled length shall have a turnaround at the house site large enough to accommodate 3 emergency vehicles at one time (Approx. 1,600 sq. ft.)"

- a. The existing driveway has a vehicle turnaround at the house site on **Lot #4** that is also in proximity to the house site on **Lot #5**. It is unclear if there is adequate turnaround capacity for **Lot #6** in tandem with the neighboring *G.A. Hutchins* property adjoining to the north.
- b. A letter should be obtained from the Charlotte Volunteer Fire & Rescue Services (CVFRS) that approves the design of the access and egress to the properties within the subdivision; particularly for **Lot #6**.

2. "All Driveways longer than 800' will have vehicle turn-outs (12' wide x 35' long) near the halfway point or every 800'."

- c. The submitted plat (see **Exhibit #2**) indicates an emergency vehicle turnout on Riverview Drive on the northeasterly corner of **Lot #4**. This standard has been met.
- d. The construction of the vehicle turnout should be completed as a condition for a Certificate of Occupancy for **Lot #6**.

7.2 General Standards - Areas of High Public Value

The following Areas of High Public Value (AHPV) have been identified on the property:

- A. Land in Active Agricultural Use: The property is not enrolled in the current active agricultural use (e.g. the "Current Use" program).
- B. Primary Agricultural Soils (Prime and Statewide - PAS): The property is composed mostly of Statewide soils located along the eastern pastures of the parcel(s) with a sliver of Prime soils on the western side of existing **Lot #4** (according to the *USDA Natural Resources Conservation Service (NRCS)* GIS database). The agricultural soils were identified by the Planning Commission as a priority *Area of High Public Value (AHPV)* to preserve within an Open Space Agreement.
- C. Steep slopes (equal to or greater than 15%): About 3.5 acres of 15-25% slope exists along the western portions of proposed **Lots #4** and **#5**. These areas are proposed to be protected in an Open Space Agreement.
- D. Surface Waters, Wetlands, and associated buffer areas: The north of **Lot #1** is traversed by a small stream, according to the Vermont Agency of Natural Resources, *Vermont Hydrography Dataset (VHD)*. An area of wetland traverses through the center of proposed **Lot #6** was identified during the State's Act 250 review for the subdivision.
- E. Wildlife Habitat: Approximately 3.5 acres of *Significant Forest Habitat* has been identified on **Lot #1** and a small portion of **Lot #5**. Approximately 1.8 acres of *Significant Aquatic Habitat* overlaps the forest habitat area on **Lot #1**, according to the "*Charlotte Significant Wildlife Habitat Map and Database*".

- F. Water Supply Source Protection Areas (SPAs):** Onsite or upon adjoining properties.
- Ground water:** There are no Groundwater Source Protection Areas or Surface Water Protection Areas on the property.
 - Surface water:** The parcel is entirely within the surface water source protection area for the Champlain Water District (System ID: VT0005092).
- G. Scenic Views and Vistas:** Carpenter Road is classified as a “*Most Scenic Road*” according to the Charlotte Town Plan. The property’s scenic pasture area to the north of Carpenter Road was identified by the Planning Commission as an ideal *Area of High Public Value (AHPV)* to preserve within an Open Space Agreement.

7.2(C) General Standards – Lot Layout

“Irregularly shaped lots (e.g., with curves, jogs, doglegs; excessively rectilinear, etc.) shall not be created unless warranted by topography, surface waters, or to avoid the fragmentation of significant natural or cultural features. . .”

The application proposes to adjust **Lot #5** to become an irregular-shaped parcel that surrounds **Lots #1** and **#6**. However, in consideration that **Lot #5** will be primarily composed of designated open space that would serve to buffer the development between each lot, and that any structures would be contained within each lot’s respective building envelope, the Planning Commission is satisfied that any potential impacts between neighboring properties (such as light, noise, etc.) are reasonably mitigated by the existing tree coverage between the lots.

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 submitted survey plat (see **Exhibit #2**) demarcates building envelopes for: **Lot #1** (0.23 acres); **Lot #5** (0.23 acres); **Lot #6** (0.19 acres).
- Lot #4** does not have a proposed building envelope. However, as it is a preexisting lot (not a “proposed lot”), it does not require the creation of a building envelope.

7.3(D) District Standards – Rural, Shoreland & Conservation Districts

“ . . . Building envelopes, to the extent feasible, shall be located, sited and configured so as not to create any undue adverse impacts on Areas of High Public Value. In the event that no other land in the parcel to be subdivided is suitable for development, building envelopes shall be designed to minimize encroachments into these areas and to minimize undue adverse impacts. . . ”

- Each proposed building envelope will minimize the encroachment on the identified *Areas of High Public Value*, discussed in **Finding 7.2**, above.

- b. The western portion of the proposed irregular-shaped **Lot #5** is within the *Significant Forest Habitat* and the eastern portion is within the scenic viewshed (discussed in **Finding 7.2(G)** above).

7.6 Water Supply & 7.7 Sewage Disposal

1. According to the property's water supply and wastewater permit EC-4-1431 (issued November 21, 1989); approved amendments EC-4-1431-1 (issued May 24, 1995) and EC-4-1431-2 (issued July 18, 1998); and the most recent permit amendment (WW-138-1322) approved on March 4, 2014, water supply and wastewater capacity has been affirmed for the existing properties.

A permit amendment application for the creation of **Lot #6** (and the adjustment of adjoining property boundaries) is anticipated for submission to the Town.

7.9 Landscaping & Screening

"The preservation of existing vegetation or additional landscaping and screening may be required by the Planning Commission as needed to: provide a buffer between developed and undeveloped areas of the subdivision, or the subdivision and adjoining properties, to increase privacy, reduce noise or glare, or to establish a barrier between incompatible land uses, including between residential and agricultural uses in accordance with Section 7.4; and/or establish or maintain a tree canopy along roads or pedestrian paths where the Planning Commission deems it appropriate. . ."

1. The installation of tree plantings intended to screen the development on **Lot #6** from the viewshed of Carpenter Road was discussed at the public hearings for the Sketch Plan Review and this subdivision application (see **Exhibit #10**).
2. In observance of **Finding 7.2(G)** above, and accordance with **Section 7.9** of the Regulations, and to preserve the viewshed from Carpenter Road, a stand of trees be planted and maintained to screen any future structures to be developed upon **Lot #6** from the view of Carpenter Road. The final subdivision plat should indicate the delineated area of the maintained tree plantings upon **Lot #6**.

8.4 Planned Residential Developments [PRDs]

Subsection 8.4(C)(1) of the Regulations stipulate that PRDs within the Rural District designed as a Conservation Project, which *" . . . 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 minimum of 50% of the lot(s) shall be designated as open space in accordance with Section 8.6. . ."*

1. The current application proposes less-than-conforming lot sizes for **Lots #1** and **#6**, and a less than fifty-foot (50') setback for the house site on **Lot #5**.
2. The deferred 1998 (33.5 acre) subdivision (discussed in **Finding 3**, above) will require a minimum of 16.75 acres to be designated within an open space agreement with the Town.

3. This fifty-percent requirement follows the precedent that has been set for all subdivision proceedings with outstanding open space deferments since the 2016 adoption of the Regulations.
4. The proposed subdivision plat (see **Exhibit #2**) proposes 9.72 acres of delineated open space for **Lot #5**, and 7.05 acres for **Lot #4** (total = 16.77 acres). This standard has been met.

8.6 Open Space & Common Land

Subsection 8.6(A) of the Regulations states: *“In designating open space and/or common land, applicants and the Planning Commission shall consider the location of the project and associated site features as identified in Table 8.1.”*

1. The proposed open space area of 16.77 acres (see **Finding 8.4(4)**, above) will protect the prioritized *Areas of High Public Value* identified in **Finding 7.2**, above.
 - a. The westerly portion of proposed **Lot #5** is an ideal area of the property to protect with an Open Space Agreement (OSA) because it has the following *Areas of High Public Value*: substantial non-fragmented block of *“Significant Forest Habitat”*, *“Steep Slopes (equal to or greater than 15%)”*.
 - b. The eastern portions of **Lots #4** and **#5** contain an open pasture identified as part of the *“Scenic Views and Vistas”* of Carpenter Road, *“Statewide Agricultural Soils”*, as well as possible wetland that is part of the identified Class II wetland on the proposed northerly adjoining **Lot #6**.
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.”*
 - a. A proposed Open Space Agreement (OSA) to conserve the proposed open space areas on **Lots #4** and **#5** (see **Exhibit #2**, above) should be submitted as a condition for subdivision approval.
 - b. The OSA or easement agreement should be drafted to emphasize protection of the *Significant Forest Habitat* (identified in **Finding 7.2**).
3. Subsection 8.6(B)(6) of the Regulations state that *“Sewage disposal, water supply areas, and road rights-of-way shall not be counted as open space except where the applicant can prove to the satisfaction of the Planning Commission that the sewage disposal, water supply facility and road right-of-way will in no way disrupt or detract from the values for which the open space is to be protected.”*
 - a. According to the 1998 *“Morrow survey”* (**Exhibit #4**, above), the wastewater disposal areas and the designated replacement areas for **Lots #4** and **#5** appear to exist within the proposed open space area along the western portion of **Lot #5**.

- b. The proposed open space area should be reconfigured to remove the acreage containing the wastewater infrastructure.

Decision

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a "2-Lot Minor Subdivision / 3-Lot Minor Subdivision Amendment/Planned Residential Development", subject to the following conditions:

1. Prior to the submission of the mylar to the Planning Commission, the applicant shall:
 - a. Submit letter documenting that the required open space acreage (i.e. 16.75 acres) within portions of **Lots #4** and **#5** (discussed in **Findings 3, 8.4** and **8.6** above) has been accepted into a conservation easement by a Land Trust; or within a draft Open Space Agreement (OSA) for the area that articulates the purpose of protecting the *Areas of High Public Value* identified in **Finding 7.2** (e.g. the *Significant Forest & Aquatic Habitats*, the Primary Agricultural Soils, Steep Slopes, and the Scenic View from Carpenter Road) in a form acceptable to the Town Attorney and the Planning Commission. This will be subsequently approved by the Selectboard, and the OSA will be recorded in a deed that is recorded within the Charlotte Land Records.
 - b. All trees for screening on **Lot #6** shall be maintained (as discussed in **Finding 7.9**).
 - c. Obtain a letter from the Charlotte Volunteer Fire & Rescue Services (CVFRS) that approves the design of the access and egress to the properties within the subdivision; particularly for **Lot #6**.
 - d. The construction of the vehicle turnout should be completed as a condition for a Certificate of Occupancy for **Lot #6**.
 - e. Revise the survey plat to include:
 - i. The delineation of the area for tree plantings on **Lot #6** (as discussed in **Findings 7.9** and **7.2** above). As depicted in Sheet 2 of **Exhibit #2** (above), the planting area should extend along the southern perimeter of the **Lot #6** property line to thoroughly screen the house site and any accessory structures to be constructed on the parcel.
 - ii. A note indicating that the conserved area on **Lots #4** and **#5** (discussed in **Findings 8.4** and **8.6** above) has been conserved in accordance with Planning Commission decision PC-20-19-SD and recorded as an Open Space Agreement in the Charlotte Land Records with its volume and page number.
 - iii. The approved wellhead to be drilled for the residence on **Lot #6**.
 - iv. The footprint(s) of the wastewater mounds to be constructed on **Lots #1** and **#6**, their designated backup disposal area, and any required easements for their access (in accordance with the anticipated approval for a water supply and wastewater permit amendment to # *WW-138-1322*; see **Exhibit #9** above).

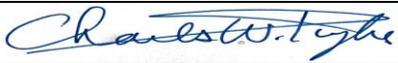
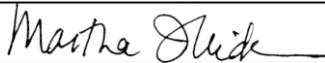
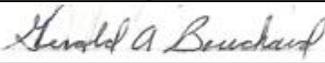
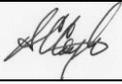
- v. The footprint(s) of the existing wastewater mounds on **Lots #4 and #5**, their designated backup disposal area, and any required easements for their access.
- vi. Reconfigured open space area for **Lots #4 and #5**, which excludes the wastewater infrastructure or replacement areas (discussed in **Finding 8.6(3)** above). A minimum of 16.75 acres should be designated as open space.
- vii. The delineation of any identified Class II wetland found (and its fifty-foot buffer) on **Lot #6**, as discussed in **Finding 7.2(D)** above.

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. In accordance with H.681 (*An act relating to government operations in response to the COVID-19 outbreak*), **this approval shall expire if the mylar for the survey is not filed and recorded in the Charlotte land records within 90 days after the date that the declared state of emergency ends.**

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 March 5, 2020: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Gerald Bouchard, Marty Illick, Dave Kenyon, and Shawn Coyle.

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:	<u>April 14, 2020</u>
2. Signed:		For / Against	Date Signed:	<u>April 14, 2020</u>
3. Signed:		For / Against	Date Signed:	<u>April 14, 2020</u>
4. Signed:		For / Against	Date Signed:	<u>April 14, 2020</u>
5. Signed:		For / Against	Date Signed:	<u>April 14, 2020</u>
6. Signed:	_____	For / Against	Date Signed:	_____
7. Signed:	_____	For / Against	Date Signed:	_____