

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

**Remo and Donna Pizzagalli
Final Plan Application for a 3-lot Minor Subdivision/PRD at 1445 Ethan Allen Highway
Application # PC-17-170-SD Reconsideration**

Introduction and Procedural History

This proceeding involves the review of an application for a 3-Lot Minor Subdivision / Planned Residential Development (PRD) submitted by Remo Pizzagalli for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as “the Regulations”). The application was received on November 17, 2017. A notice of public hearing was published in *The Citizen* newspaper on November 30, 2017. A hardcopy of the notice was mailed to all adjoining landowners, and posted at the following three locations: the Town Office Building, the Brick Store, and Spear’s Corner Store during that same week. Electronic notice was posted on the Charlotte Town website calendar.

A site visit to the property was undertaken at 1445 Ethan Allen Highway (along Mutton Hill Road) on August 17, 2017 at 6:00 PM prior to the initial Sketch Plan Review (PC-17-87-SK) held that evening at the Planning Commission meeting.

The application was considered by the Planning Commission at the public hearing on December 21, 2017 at approximately 7:00 PM. Present at the public hearing were the following members of the Planning Commission; Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, and Gerald Bouchard. Daryl Benoit (Town Planner), the applicant Remo Pizzagalli, and neighbor Kathleen McKinley Harris participated in the hearing.

A decision was issued on February 1, 2018 (i.e. PC-17-170-SD). On February 28, 2018, the applicants requested Reconsideration of the Findings of Fact and Decision as per Section 9.9(E)(4)(b) of the Land Use Regulations. The request was heard at the Planning Commission meeting on March 1, 2018 where a motion was approved to reopen the public hearing to reconsider decision PC-17-170-SD. A notice of public hearing was published in *The Citizen* newspaper on March 29, 2018. Hardcopy notices were posted at the Town Office Building, the Brick Store, and Spear’s Corner Store on March 26, 2018. Electronic notice was again posted on the Charlotte Town website calendar. Again, notice was mailed to all known adjoining landowners and interested parties that participated in the December 21, 2017 public hearing. The Reconsideration was heard at the Planning Commission meeting held on April 19, 2018.

Exhibits

1. Application Exhibits for a Minor Subdivision, including; **A.** PC-17-170-SD application form signed by Remo Pizzagalli; **B.** A preliminary plat of the proposed of 3-lot subdivision; “Subdivision Plat of Lands Owned by Remo R. & Donna T. Pizzagalli & Boundary Line Adjustment with Lands Owned by Peter J. & Stephanie B. Pizzagalli – Church Hill & Mutton Hill Roads, Town of Charlotte, County of Chittenden, State of Vermont” (dated NOV 2017) by Seth Kittredge (LS #060709), Kittredge Land Surveying, PLLC, Vergennes, Vermont.

2. Map Slide 129, Page 4; Boundary Survey - "Portion of Property of Remo R. & Donna T. Pizzagalli – Charlotte, Vermont" (Revised March 13, 2002) by Gordon G. Harlow (LS #154).
3. Planning Commission Decision; Remo and Donna Pizzagalli Final Plat Application for A 2-Lot Subdivision Application #PC-02-02, Approved by the Planning Commission: March 7, 2002.
4. Sketch Plan Review; Planning Commission Letter (PC-17-87-SK Pizzagalli), dated September 28, 2017.
5. Minor Subdivision Decision; Planning Commission decision (PC-17-170-SD Pizzagalli), dated March 1, 2018.
6. Letter of Request to Planning Commission to reconsider decision PC-17-170-SD, dated February 28, 2018.
7. Town Staff Correspondence with Assistant Chief of Charlotte Fire & Rescue Services (April 2018).
8. Charlotte Land Records – Volume 130, Pages 81-84 (August 14, 2002) Subdivided "Lot 2" (5.3-acre parcel), 60' Access & Utilities Right-of-Way (along current driveway off of Mutton Hill Rd.), Act 250 Disclosure Statement (no other documentation); Volume 155, Page 535 (April 15, 2005) Current Use Agricultural; Volume 93, Page 524 (April 7, 1997) GMP Utility Easement – Underground from east side of US 7 extending easterly 485' to mounted transformer (# Pad 40-02) running in a 10' strip adjacent to southerly edge of drive; Volume 36, Page 294 (July 23, 1979) Conveyance to Pizzagalli from Wolfe.
9. Planning Commission Minutes from meetings held on *December 21, 2017, August 17, 2017, and April 19, 2018*.

Regulations in Effect

Charlotte Town Plan, 2016

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Findings

Background

1. Remo and Donna Pizzagalli own a property located at 1445 Ethan Allen Highway (US Route 7) comprising 78.08 acres primarily within the Rural Zoning district (RUR), and partially within the Route 7 Scenic Overlay District (R7O).
2. This application is a modified submission of an application (based on the PC-17-87-SK Sketch Plan Review) proposing to subdivide the 78.08 acre parcel into; a 32.04 acre parcel with a 1.75 acre building envelope (Lot 1), a 28.28 acre parcel with a 1.89 acre building envelope (Lot 2), and a 8.63 acre parcel with a 2.0 acre building envelope (Lot 3). Additionally, the application proposes a Boundary Adjustment to convey 3.81 acres to the existing landlocked 5.32 acre "island parcel" (i.e. 291 Mutton Hill Road) owned by Peter J. and Stephanie B. Pizzagalli (Lot 4), thereby increasing it to 9.13 acres.
3. The previous 2002 subdivision (PC-02-02) created Lot 4 from an 80-acre parent parcel. Finding #11 of the decision found that as the subdivision involved a parcel over 25 acres in size, it was therefore subject to *Planned Residential Development* provisions. *Condition #8* of the decision further stipulated that any future subdivision of the property shall include the acreage of former Lot 2 in calculating the open space requirements:

“Any future subdivision of Lot 1 shall include the acreage of Lot 2 in calculating the open space requirements provided for in *Chapter V Section 5.15* of the Charlotte Planning Bylaws, or any amendment thereof.”

The currently amended regulations state that a “*minimum of 50% of the lot(s) shall be designated as open space in accordance with Section 8.6*”. Therefore, for the purposes of the current application, a minimum of 40 acres will be designated as open space. The applicant has proposed designating 46.74 acres as Open Space/Conserved Land.

4. The Reconsideration hearing for the Minor Subdivision decision PC-17-170-SD (approved by the Planning Commission on February 1, 2018) was warned to address only the decision’s conditions relating to:
 - A. The building envelope for Lot 1.
 - B. Modifications to the Open Space Agreement.

7.2 General Standards - Areas of High Public Value

1. Land in Active Agricultural Use: About 29 acres on the western side of the parcel is in active agriculture use.
2. Primary Agricultural Soils: Most of the parcel comprises Statewide soils. However there are about 1.8 acres of Prime agricultural soils that exist along the northern-central area of the property that have been identified within the USDA Natural Resources Conservation Service GIS database.
3. Steep slopes (equal to or greater than 15%): About 0.5 acres of 15-20% slope exists along the northeast property line.
4. Flood Hazard Areas: The property is within “*Area of Minimal Flood Hazard*” in the FEMA National Flood Hazard Layer (NFHL).
5. Surface Waters, Wetlands, and associated buffer areas: McCabe’s Brook runs parallel to the easternmost boundary of the property and empties into the LaPlatte River and Shelburne Bay. Areas of Class II wetland identified on the property include; about 17.5 acres on the eastern portion of the property, and approximately 0.1 acre along Mutton Hill Road, just west of the driveway serving Lot 4 (according to the *Vermont Significant Wetlands Inventory – VSWI* data).
6. Wildlife Habitat: *Significant Forest Habitat* has been identified on the eastern wooded side of the parcel. *Significant Aquatic Habitat* exists along the 100’ buffer of the McCabe’s Brook on the eastern boundary of the parcel. *Significant Wildlife Linkage Habitat* exists at the north end of the parcel and contains about 1/3 of the parcel to the north (according to the “*Charlotte Significant Wildlife Habitat Map and Database*”).
7. Water Supply Source Protection Areas (SPAs):
 - a. Ground water: The southwest portion of the parcel is within the Pine Ridge (ground) Water System.
 - b. Surface water: The parcel is entirely within the surface water source protection area for the Champlain Water District.
8. Historic Districts, Sites, and Structures: According to the Vermont Division of Historic Preservation “*Historic Sites & Structures Survey*”, the western end of the property abuts the “*Old Route 7 Historic District*” (Site No. 0403-2). The historic site known as the “*Clement*

Residence" (Site No. 0403-2-3) exists on the abutting 1.25-acre parcel to the southwest of the property, on the corner of Church Hill Road and Mutton Hill Road.

9. Scenic Views and Vistas: The property abuts US Route 7 in the "*vicinity of the north end of Old Route 7 (V3) Town scenic overlook*" identified within the Charlotte Town Plan. According to VTrans, US Route 7 is a Scenic Highway that serves as part of the Lake Champlain Byway.
10. Conserved Land on Adjacent Parcels: There is conserved land on abutting properties, including the Galbreath property (10.22 acres of Town-owned land) and the Charlotte Park & Wildlife Refuge (251.8 acres of Town-owned land) to the west, and the Nordic Farm (with 405.6 acres in the Vermont Land Trust) to the east and north.

7.2(E) General Standards – Building Envelopes

1. *"...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. . ."*
 - a. The proposed 1.75 acre building envelope for Lot 1 is proposed to abut the Route 7 Scenic Overlay District, and terminates along the northern edge of the current stand of spruce trees that traverse along the southern portion of the lot, parallel to Mutton Hill Road (as indicated within the plat cited in Exhibit 1B above). To protect the identified scenic viewshed, at least one line of the current stand of spruce trees along northern boundary of the building envelope should be maintained to screen any future structures from the view of Church Hill Road and US Route 7. Additionally, when Lot 1 is developed, at least five (5) three-inch (3") caliper trees should be planted just north of the aforesaid designated line of trees, and thereafter maintained to augment the screening of any future development to occur within the building envelope of Lot 1.
 - b. The 1.89 acre building envelope for Lot 2, and the 2.00 acre building envelope for Lot 3 are each proposed to be developed behind their respective treelines. To protect the identified scenic viewshed, the treelines should be maintained to screen any future structures from the view of Church Hill Road and US Route 7.

7.6 Water Supply & 7.7 Sewage Disposal

1. The current applications has been granted a water supply and wastewater permit for a system that is planned to be built on Lot 3 (permit # WW-138-1706). The application proposes the creation of two additional wastewater disposal systems on Lot 1 to serve proposed Lots 1 and 2.
2. A Wastewater System and Potable Water Supply Permit (permit # WW-138-1706) for this project was granted to Remo Pizzagalli by the Town on December 17, 2017. The system is designed to accommodate Lot 3 with a capacity for a 4 bedroom single-family dwelling. Where the proposed footprints for wastewater systems for Lot 1 and Lot 2 are depicted on the proposed plat, a Wastewater System and Potable Water Supply Permit has not been submitted to the Town.

7.10 Roads, Driveways, & Pedestrian Access

1. Access to Lot 4 is currently served by a 60' right-of-way, which would be extended about 200'-250' northward to the proposed Lot 3.

2. According to the survey, the proposed driveway is estimated to run about 800' in length from Mutton Hill Road to the proposed building envelope on Lot 3. The *“Recommended Standards for Developments and Homes”* (adopted September, 1997) state;

“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.)”

In discussions with the Town Administrator, Town Planner, and the Zoning Administrator, Charlotte Volunteer Fire and Rescue Services (CVFRS) has raised their requirement for fire truck turnarounds to be 85' in diameter for driveways over 500' in length in order to accommodate their new vehicles. At the April 19, 2018 public hearing, the applicant expressed concern that the size of turnaround has more than doubled. Citing the 1997 recommended standards, only a 22' circle would be required for the turnarounds. The Assistant Chief, Rob Mullin has stated that CVFRS could live with an 80' wide turnaround, as the minimum turning radius for the new trucks are 63' for a right turn and 72' for a left turn. Additional accommodation must be made for new drivers and potential snowbank impact. The 1997 standard accommodates emergency vehicles that are currently 38 years old. The Assistant Chief has offered to undertake a site visit to the property to demonstrate the requirements for the new vehicles. He has stated that there may be an option to develop the required apparatus as a hammerhead turnaround (if its design meets CVFRS's current dimensional requirements).

3. Access to Lot 1 and Lot 2 are proposed to originate from a curb-cuts on Mutton Hill Road, which will require a Highway Access Permits to be approved by the Charlotte Selectboard.

8.4 Planned Residential Developments (PRDs)

1. 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 western area of Lot 1 is an ideal area of the property to protect with an Open Space Agreement (OSA) because a substantial portion of it is within the *Route 7 Scenic Overlay District*, and the remainder of it is within the viewshed of the *“Old Route 7 Town Scenic Overlook”* (an Area of High Public Value).
 - b. The eastern area of Lot 2 is an ideal area of the property to protect with an OSA because it includes *“Areas of High Public Value”*, including McCabe's Brook, *Significant Aquatic Habitat*, *Significant Forest Habitat*, and Class II wetland (Areas of High Public Value).

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. As a substantial portion of Lot 1 on the western side is within the Route 7 Scenic Overlay District, the applicant has proposed designating 28 acres of the open space/conserved land within that area of the lot. However, the delineation of the open space is not currently shown in the submitted survey (Exhibit 1B above).

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.”*

As a substantial portion of Lot 2 on the eastern side comprises *Significant Forest Habitat* and some identified Class II Wetland, the applicant has proposed designating 18.74 acres of the open space/conserved land within that area of the lot. However, the delineation of the Open Space acreage (that would protect the aforementioned Areas of High Public Value) is not currently shown in the submitted survey (Exhibit 1B above).

3. Subsection 8.6(B)(5) of the Regulations indicate that additional measures *“may be imposed to protect resources identified on the parcel. . .”*

According to the December 21, 2017 minutes, the Planning Commission requested that the applicant’s Open Space Agreement with the Town include a provision to protect the portion of McCabe’s Brook and associated Class II wetland identified along the eastern end of the property from further human interference and be allowed to meander within its natural state.

4. 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.”*

The wastewater mounds for Lot 1 and Lot 2 appear to be screened from the north by a row of trees that run along the northernmost property boundary of Lot 1.

5. According to the April 19, 2017 minutes, the Planning Commission had not previously discussed restricting off-road vehicles from operating upon the designated open space area. Nevertheless, the language (optionally included within the Open Space Agreement [OSA] template) had been removed from the current OSA draft under deliberation with the Planning Commission. The Planning Commission feels that item 3c within the OSA (articulated as per Condition 3e, below) provides adequate protection of the proposed open space.

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. An emergency vehicle turnaround will be required for the driveway serving Lots 3 and 4 as per Finding 7.10 above. The design is subject to the approval of Charlotte Volunteer Fire and Rescue Services (CVFRS).
3. 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. Revise the survey so that the delineation of the open space/conserved land are included in the plat as per Findings 1 and 2 of 8.6 above.
 - c. Revise the survey to depict the line of trees that will be maintained to screen any structures within the building envelope for Lot 1 as per Finding 1a of 7.2(E) above. A note will be added to the survey indicating that the line of trees will be maintained as a condition of the Planning Commission reconsidered decision PC-17-170-SD.
 - d. Maintenance of the line of trees and the additional tree plantings covered in Finding 1a of 7.2(E) will be required prior to the issuance of the Certificate of Occupancy.
 - e. Revise the survey to depict the emergency vehicle turnaround as per Finding 7.10(2) above.
 - f. Submit an Open Space Agreement to be approved by the Selectboard. The OSA shall articulate that the purpose of the open space area is to protect the *Significant Forest Habitat*, *Significant Aquatic Habitat*, and the Wetland area identified along the McCabe's Brook, and include the provision that "*the Open Space Area for Lot 2 shall be maintained in its natural state, in which no cutting, clearing, or mowing (except for the existing path along McCabe's Brook not to exceed a 15 foot width), grazing of animals, or other disturbance to the land, nor interference with the meandering course of the McCabe's Brook is allowed.*" The OSA shall further stipulate that the treelines screening structures on Lots 1, 2, and 3 from US Route 7 and Church Hill Road shall be maintained.

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 December 21, 2017: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, and Gerald Bouchard.

Members Present at the Public Hearing for Reconsideration of PC-17-170-SD on April 19, 2018: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, Richard Eastman, 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: | <u><i>Joseph A. Bouchard</i></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u><i>5/30/2018</i></u> |
| 2. Signed: | <u><i>Ally</i></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u><i>5/30/2018</i></u> |
| 3. Signed: | <u><i>Marisa Del</i></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u><i>5.31.18</i></u> |
| 4. Signed: | <u><i>Christy</i></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u><i>6.1.18</i></u> |
| 5. Signed: | _____ | For / Against | Date Signed: | _____ |
| 6. Signed: | _____ | For / Against | Date Signed: | _____ |