

This 21st day of July A.D. 2017
at 8 o'clock 0 minutes A m andCHARLOTTE PLANNING COMMISSION Recorded in vol. 229 on page 382-386
SUBDIVISION REVIEW Attest Ch. M. M. M. Town Clerk
FINDINGS OF FACT AND DECISION

In re: Harriet S. Patrick Trust request for a Boundary Adjustment for 1355 Church Hill Road
Permit Application No. PC-17-56-BA

Introduction and Procedural History

This proceeding involves the review of an application for a Boundary Adjustment submitted by Terry Harris (of Harris Surveying & Land Dispute Evaluation) for Harriet Patrick for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as the Regulations). The application was received on May 11, 2017. The property is located at 1355 Church Hill Road in the Rural (RUR) Zoning District.

Public notification was accomplished via electronic posting of the notice on the Town website meeting calendar; publication in "The Citizen" newspaper for the week of June 1, 2017; and by posting hardcopies of the notice at the Town Offices, the Old Brick Store, and Spear's Corner Store on May 25, 2017. A copy of the notice was also mailed out to all adjoining landowners on the same date.

A site visit was conducted at 1355 Church Hill Road on June 15, 2017 around 6:30 PM. Present at the site visit were the following members of the Planning Commission; Jeff McDonald (Chair), Peter Joslin (Vice-Chair), and Charlie Pughe. Terry Harris (the Land Surveyor representing Harriet Patrick), Daryl Benoit (the Charlotte Town Planner) were also present during the site visit.

The application was considered by the Planning Commission at their public hearing on June 15, 2017. Present at the public hearing were the following members of the Planning Commission; Jeff McDonald (Chair), Peter Joslin (Vice Chair), Charlie Pughe, and Richard Eastman. Daryl Benoit (Town Planner), Terry Harris, and Richard Cunningham (Ms. Patrick's Husband) also participated in the hearing. Mr. Harris and Mr. Cunningham represented Ms. Patrick who did not attend due to illness.

Exhibits

1. Application form for Boundary Adjustment
2. Survey (submitted for the application): "Final Plat for Boundary Adjustment of Lands of Harriet Stone Patrick, Trustee, 1355 Church Hill Rd, Charlotte, VT" (dated June 13, 2017) by Albert W. Harris, VT L.S. 584, Harris Surveying & Land Dispute Resolution, Hinesburg, VT.
3. Survey (submitted for the application): "Plat of Survey of Lands of Harriet Stone Patrick, Trustee, "Tavern Lot" - 1355 Church Hill Rd, Charlotte, Vermont" (dated June 13, 2017) by Albert W. Harris, VT L.S. 584, Harris Surveying & Land Dispute Resolution, Hinesburg, VT.
4. Planning Commission Decision ([PC-15-08](#) Harriet Patrick, Final Plan Application for Boundary Adjustment); Boundary Adjustment Review - Findings of Fact and Decision, dated August 2015.
5. Sketch Plan Review; Planning Commission Letter ([PC-15-08-SK Patrick](#)), signed on June 1, 2015.
6. Charlotte Land Records – "Tavern Lot": Volume 227, Page 369, Maintenance agreements between "Tavern Lot" and "Barn Lot" (26 Jan 2017); Volume 84, Pages 426-28, Conveyance of "Tavern Lot" to Trust (8 Mar 1995); Volume 84, Pages 429-31, Conveyance of "Barn Lot" to Trust (8 Mar 1995);

Volume 39, Page 276 (29 Sep 1981); Volume 37, Page 27 (15 Nov 1979); Volume 34, Page 146 (26 May 1976); Volume 25, Pages 105-106 (14 Aug 1939), and Volume 19, Page 497 (27 Nov 1906). "Wooded Lot": Volume 84, Pages 418-19, (8 Mar 1995); Volume 29, Pages 24A-25, Map of property to be conveyed Linehan/Trombley to Pizzagalli (23 Aug 1965); Volume 22, Pages 292-93, includes a conveyance of an unidentified right-of-way (15 Nov 1923).

7. *Map Slide 39, Book 6, Page 10; Survey for "Remo R. & Donna T. Pizzagalli – Land To Be Conveyed To Harriet S. Patrick" (dated March 1985) by Fred C. Koerner C.E., Burlington, Vermont.*
8. *State of Vermont, Agency of Natural Resources, Department of Environmental Conservation; Wastewater System and Potable Water Supply Permits; WW-138-818; Harriet S. Patrick (dated August 1, 2008); WW-4-0251 (dated May 2, 1990).*
9. *Existing Access Permit for an existing field drive for Harriet S. Patrick, Charlotte, US 7, L.S. 234+95 RT (at mile marker 4.45 right); Permit ID #: 39158; Vermont Agency of Transportation, Utilities & Permits Unit (dated October 15, 2014).*
10. *Archived Town Highway Maps (Charlotte); Vermont Agency of Transportation, 1931-2015.*
11. *Planning Commission Minutes from meetings held on May 7, 2015, August 6, 2015, and June 15, 2017.*
12. *Zoning Board of Adjustment Minutes from meetings held on October 18, 1979, August 7, 1981, and May 9, 1990.*

Regulations in Effect

Town Plan, 2016

Land Use Regulations, 2016

Vermont Agency of Natural Resources, Wastewater System and Potable Water Supply Rules, 2007

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. Harriet Patrick owns a 3.1 acre parcel located at 1355 Church Hill Road that includes the "1812 Tavern" (Lot 1), formerly known as the "Edgerton Homestead", and an undeveloped 24.5 acre "Wooded Lot" (Lot 2) abutting to the west within the Rural zoning district.
2. The current application proposes to shift 4.5 acres (including a small pond) from Lot 2 to Lot 1 to provide more privacy for a prospective buyer of the property. Lot 1 would increase to 7.6 acres, where the Lot 2 would decrease to 20 acres.
3. This application is a resubmission of a previous application (i.e. PC-15-08) to adjust the boundary between the two parcels. The previous application was approved by the Planning Commission on August 25, 2015. However the Planning Commission's decision expired on February 25, 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 Regulations and 24 V.S.A. *Chapter 117, Section 4463 Subdivision review*).
4. A change of use of the "1812 Tavern" was approved by the Zoning Board of Adjustment (ZBA) for no more than six professional offices in October 1979. This was amended to include an additional single person apartment in August 1981.

5. A variance was granted by the ZBA on May 9, 1990 to construct a replacement barn on an abutting ~0.6 acre property to the north (i.e. 1389 Old Church Hill Road, hereafter referred to as the "Barn Lot") that was owned by the applicant. The barn included a two-car garage and upstairs living quarters. The water supply and wastewater permit for Lot 1 was amended to include capacity for the new barn. On January 29, 2017, the "Barn Lot" was conveyed to Terry Close along with five maintenance agreements between Lot 1 and the "Barn Lot" for; 1. Driveway Maintenance, 2. Septic System Maintenance, 3. The Common Well, 4. Easements and Right-of-Way, 5. Default (of maintenance).

3.2 Road, Driveway and Pedestrian Access Requirements

1. Section 3.2(B) of the Regulations state that access to US Route 7 is subject to the approval of the Vermont Agency of Transportation (VTrans), and that highway access permits must be issued prior to the issuance of a zoning permit.
2. An access permit for an existing field drive access to Lot 2 from US Route 7 was issued from the Vermont Agency of Transportation (see Exhibit 9 above). The access point is gated at the northern end of the pullout area along the eastern (northbound) side of US 7 (just north of and across the road from Patton Woods Road). The access is indicated along the survey's western property boundary with the label "*H. Patrick chain link fence with gate*" (see Exhibit 2 above).
3. The permit stipulates that where the existing field drive access to the property is suitable as is, and no work is required or authorized by the permit, "*No subdivision or future land development (single-family, commercial, etc.) shall utilize this existing field drive access unless approved otherwise by the Vermont Agency of Transportation. By issuance of this permit, all previous permits for access to this property are revoked.*"
4. There is no other identified access to Lot 2 from any public road. This lot was owned by the Horsford Nursery when it was divided by the portion of US 7 that was constructed west of Mutton Hill, sometime between 1961-63. The Planning Commission minutes of June 15, 2017 reflect that, as was the practice of the era, any agricultural operation divided by new highway construction was granted access to each side of the newly divided lot.
5. Where the Planning Commission prefers an access right-of-way to the property to be from another location than Route 7 (or from an existing curb cut on Route 7), the applicant has an existing access permit that may be upgraded by VTrans for future development. However, for this application any development for Lot 2 has been deferred.
6. Location of an access easement from Lot 1 to Lot 2 would impact Forest Habitat (see item 5 of Section 7.2 below), and would be unnecessary as an access already exists from US 7.

7.2 General Standards - Areas of High Public Value

1. Land in active agricultural use: The land on both properties is not currently in agricultural use.
2. Primary agricultural soils: Identified within the USDA Natural Resources Conservation Service GIS database, Prime agricultural soils are located on Lot 1 covering about 1/3 of the property extending westward from the Church Hill Road right-of-way boundary, and on about 3 acres along the southwest portion of the Lot 2. Statewide agricultural soils compose the remaining 2/3 of Lot 1 and the northern 1/3 of Lot 2.

3. Steep slopes (equal to or greater than 15%): Steep slopes of 15-25% exist comprise about 2.5 acres of the central portion of Lot 2. Slopes greater than 25% comprise about 0.25 acre area along the southwest corner of the property.
4. Surface Waters, Wetlands, and Associated Buffer Areas: A small tributary of Holmes Creek originates on the property from the small pond currently located on Lot 2. There is an area of Class 2 wetland along the southwestern corner of Lot 2 that is indicated within the Vermont Department of Environmental Conservation's *Vermont Significant Wetlands Inventory (VSWI)* "Wetlands Class Inventory Layer".
5. Wildlife Habitat: Forested land covers the majority of the area of Lot 2, all of which has been identified as *Significant Forest Habitat* within the GIS layers of the "[Charlotte Significant Wildlife Habitat Map and Database](#)". Any future development proposed for Lot 2 would impact the identified Forest Habitat on the property. *Significant Linkage Habitat* exists in a sliver area along the western property line of Lot 2 where it abuts the US Route 7 right-of-way, and along the southeastern portion of the property. A small area of *Significant Aquatic Habitat* exists along the tributary.
6. Water Supply Source Protection Areas (SPAs): Groundwater Source Protection Area for the "Pine Ridge Water System" and Surface Water Protection Area for the "Champlain Water District" exists on the eastern portion of Lot 1, encompassing the "1812 Tavern" building.
7. Historic Districts, Sites, and Structures: According to the Vermont Agency of Commerce and Community Development - Division for Historic Preservation, Lot 1 was listed on the State Register of Historic Places as part of the "Old Route 7 Historic District" on April 9, 1980. The "1812 Tavern" building (otherwise known as "The Tavern on Mutton Hill") was entered in the National Register of Historic Places on December 12, 1982 (NRHP Reference ID# 82001763). Although it is currently undeveloped, the entirety of Lot 2 has also been identified as part of the "Old Route 7 Historic District" within the 2002 State Historic District GIS database.
8. Scenic Views and Vistas: Lot 2 abuts US Route 7, a "Scenic Highway" according to the Charlotte Town Plan.
9. Conserved Land on Adjacent Parcels: There are no conserved lands identified on abutting parcels of either property.
10. No development is currently proposed for Lot 2. As the lot is not conserved, it may be developed with a future land use application.

7.6 Water Supply & 7.7 Sewage Disposal

1. A letter has been submitted to the Town by the applicant's water supply and wastewater consultant (Spencer Harris) that explains; the existing wastewater system that is shared for both Lot 1 and the "Barn Lot" will be designed to exclusively serve the "Barn Lot", whilst a new system is in design to exclusively to serve Lot 1.
2. According to Section 1-304(a)(11)(A) of the State of Vermont "*Wastewater System and Potable Water Supply Rules*", an amendment to the property's Wastewater and Potable Water Supply permit (WW-138-0818) will not be required for this Boundary Adjustment application because;
 - a. The lot is increased in size, and
 - b. The boundary line being adjusted is located, after adjustment, at least 500 feet from the footprint of the building or structure on an improved lot.

3. The current application does not propose a water supply and wastewater easement for Lot 2.

Decision

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

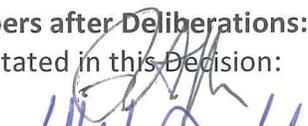
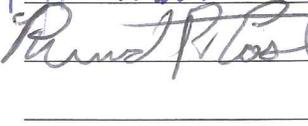
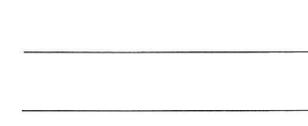
1. Two paper copies (one full size and one 11"x 17"), an electronic copy, and a mylar (measuring 18" x 24", with a margin of 2" outside of the border line for binding on the left edge of the sheet with a 1" border on all remaining edges) of the plat with the updated building envelope, will be submitted 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.
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. Update the proposed survey plats (where applicable) to include the footprint of the pond and the footprint of the right-of-way access to the gate with a label referencing the access permit for an existing field drive (see Exhibit 9 above). A note will be added to each survey page indicating that Lot 2 is not approved water supply and wastewater disposal, and that any future development on Lot 2 will require prior approval by the Charlotte Planning Commission.
3. Once the lands have been adjusted between Lot 1 and Lot 2, they will merge within their respective parcels and cannot be conveyed separately unless a new application for a subdivision amendment is submitted and approved by the Planning Commission.
4. No development is proposed for Lot 2, which will continue to be a deferred lot where future development proposals will be required for a subdivision, boundary adjustment, water supply and wastewater permit, building envelope placement, or any other development.

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. **Approved plats not filed and recorded within the aforementioned 180 day period shall expire.**

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 June 15, 2017: Jeff McDonald (Chair), Peter Joslin (Vice Chair), Charlie Pughe, and Richard Eastman.

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>7/20/17</u> |
| 2. Signed: |  | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>7/20/17</u> |
| 3. Signed: |  <u>Mitra & Co.</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>7-20-17</u> |
| 4. Signed: |  <u>Ramona P. ...</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>7/20/17</u> |
| 5. Signed: | _____ | For / Against | Date Signed: _____ |
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