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Attest: [Signature] Town Clerk

CHARLOTTE PLANNING COMMISSION

SUBDIVISION REVIEW

FINDINGS OF FACT AND DECISION

In re: Estate of Thomas C. Henneberger and Peter Rosenfeld request for a Boundary Adjustment for 1830 Greenbush Road
 Permit Application No. PC-17-75-BA

Introduction and Procedural History

This proceeding involves the review of an application for a Boundary Adjustment submitted by Peter Rosenfeld representing the Estate of Thomas C. Henneberger for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as the Regulations). The application was received on June 13, 2017. The property to be adjusted is located at 1830 Greenbush Road. Acreage will be transferred from this parcel to two adjoining parcels; 1. 1908 Greenbush Road owned by Peter and Diane Rosenfeld, and 2. 1946 Greenbush Road owned by Andrew and Nancy Milliken. Each of the properties are located within the Rural Zoning (RUR) 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 July 6, 2017; and by posting hardcopies of the notice at the Town Offices, the Old Brick Store, and Spear's Corner Store during that week. A copy of the notice was also mailed out to all adjoining landowners on the same date.

A site visit was conducted at the properties on July 20, 2017 around 6:00 PM. Present at the site visit were Planning Commissioner Dick Eastman, Peter Rosenfeld (an authorized representative of the Thomas C. Henneberger Estate for the proceedings), and Daryl Benoit (Town Planner).

As there was no quorum for its July 20, 2017 meeting, the Planning Commission considered the application at their public hearing on August 3, 2017 at 7:00 PM. Present at the hearing were the following members of the Planning Commission; Jeff McDonald (Chair), Peter Joslin (Vice Chair), Charlie Pughe, Richard Eastman, and David Kenyon. Daryl Benoit (Town Planner), Peter and Diane Rosenfeld, and Andrew Milliken also participated in the hearing.

Exhibits

1. Application form for Boundary Adjustment
2. Survey (submitted for the application): "Boundary Adjustment Plat, Properties of The Estate of Thomas C. Henneberger, Jr., Peter E. and Diane P. Rosenfeld and Andrew and Nancy Milliken, 1830 – 1908 – 1946 Greenbush Road, Charlotte, Vermont" (dated July 2017) prepared by Stuart J. Morrow, Consulting Land Surveyor, VT LLS. 565, Shelburne, VT.
3. Charlotte Land Records – Volume 74, Page 576, Deed (1993); Volume 66, Pages 377, Conveyance of Parcel #1 (9 May 1991); Volume 66, Pages 377, Conveyance of Parcel #1 (9 May 1991); Volume 33, Page 364, Conveyance of Parcel #2 - The property is subject to all rights of way of record for power lines and for telephone lines and for the original Rutland Railroad right of way (28 Oct 1975); Volume 30, Page 64A, Survey by W.A. Robenstein, Land Surveyor (May 1968); Volume 25, Page 485, 282-acre Oil, Gas, & Mineral easement for the Cambrian Corporation (27 Oct 1944).



4. *Map Slide 9, Volume 2, Page 45; Survey: "Plat of Lot to be Conveyed by L. John Cain & John J. Deschenes to Howard B. & Alma G. Mitchell in the Town of Charlotte, VT"* (dated October 1975) by John A. Marsh.
5. Charlotte Planning and Zoning Office parcel file for 1830 Greenbush Road.
6. Planning Commission Minutes from the meeting held on August 3, 2017.

Regulations in Effect

Town Plan, 2016

Land Use Regulations, 2016

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

Findings

Background

1. The Thomas C. Henneberger Estate owns an 11.3 acre property (Lot 1) within the Rural zoning district located at 1830 Greenbush Road that comprises two parcels; a 9.3 acre parcel (Lot 1A), and a 1.99 acre parcel (Lot 1B) formerly known as the "Mitchell Property".
2. The house at 1830 Greenbush Road was constructed in 1974 (by former landowners Howard and Alma Mitchell) upon the boundary shared between Lot 1A and Lot 1B. Both parcels retain a separate identity within the Town's 2016 parcel database (see **Figure 1** below). No historical records have been found that reflect the merger of Lot 1A and Lot 1B.
3. Peter and Diane Rosenfeld own an adjacent 1.2 acre parcel of land located at 1908 Greenbush Road (Lot 2). Andrew and Nancy Milliken own another adjacent 1.21 acre parcel located at 1946 Greenbush Road (Lot 3).
4. The current application proposes to adjust 2.66 acres from Lot 1 to Lot 2, and 3.05 acres from Lot 1 to Lot 3, thereby reducing Lot 1 to 5.5 acres.
5. Unless the Lot 1A and Lot 1B are combined, the Planning Commission cannot approve the current application for a Boundary Adjustment because it would be approving Lot 1A to become a non-conforming 3.51 acre lot. Approval of the Boundary Adjustment would require it to be reviewed under a separate application as part of a Planned Residential or Planned Unit Development (PRD/PUD) under Chapter VIII of the Regulations.
6. The Planning Commission has requested that the applicant update the deed in the Charlotte land records to reflect the merger of the two parcels, so that there is no possibility of creating a non-conforming parcel of less than five (5) acres upon approval of the boundary adjustment application.

3.2 Road, Driveway and Pedestrian Access Requirements

1. No new driveways, nor modifications to the existing highway access permits are proposed.

7.2 General Standards - Areas of High Public Value

1. Land in active agricultural use: The land on the three properties is not currently in agricultural use.
2. Primary agricultural soils: Identified within the USDA Natural Resources Conservation Service GIS database, the southern half of Lot 1A comprises Primary Agricultural Soils. The northern half of that lot comprises Statewide soils. However there is about 1.8 acres of Primary Agricultural Soils that exist along the northern-central area of the property.

3. Steep slopes (equal to or greater than 15%): Areas of 15-20% slope have been identified along Lot 1B, Lot 2, and Lot 3.
4. Surface Waters, Wetlands, and Associated Buffer Areas: A tributary of the Holmes Brook (VT05-12) runs along the adjacent property to the west (across the RR tracks). ~0.9 acres of Class 2 wetland exists on the adjacent property to the north, which is indicated within the Vermont Department of Environmental Conservation's *Vermont Significant Wetlands Inventory (VSWI) "Wetlands Class Inventory Layer"*.
5. Wildlife Habitat: Within the GIS layers of the "*Charlotte Significant Wildlife Habitat Map and Database*", *Significant Wildlife Linkage Habitat* has been identified on the western wooded half of Lot 1A. A small area of *Significant Aquatic Habitat* and *Significant Shrubland Habitat* have been identified along the north end of Lot 1A.
6. Water Supply Source Protection Areas (SPAs): There are no *Groundwater Source Protection Areas* nor *Surface Water Protection Areas* on any of the properties, or on adjoining parcels.
7. Historic Districts, Sites, and Structures: There are no historic sites or structures on any of the properties, or upon their adjoining parcels. The properties are not within a Historic District.
8. Scenic Views and Vistas: Each lot abuts Greenbush Road, which is identified as a "*Most Scenic Public Highway*" within the Charlotte Town Plan.
9. Conserved Land on Adjacent Parcels: There are no conserved lands identified on the lots, or upon abutting the lots.

7.3 District Standards – Settlement Patterns

1. No development is currently proposed for any of the Lots.
2. Section 7.3 (D)(5) of the Regulations state: "*Clustering of development, including the creation of lots with an area less than the minimum lot size for the district, is be off-set [sic.] with the dedication of open space.*" Therefore, Lot 1B should be merged with the remainder of Lot 1A as a condition of the subdivision so that Lot 1A will not be transformed into a non-conforming lot of less than 5 acres.

7.6 Water Supply & 7.7 Sewage Disposal

1. As the boundary adjustment will decrease the size of Lot 1, a new Wastewater and Potable Water Supply permit (or an exemption) would need to be obtained from the Charlotte Planning and Zoning Office that is in accordance with the State of Vermont "*Wastewater System and Potable Water Supply Rules*".

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 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 be approved by 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 survey plat to verify and hence include any of the iron pins found that were indicated in the 1975 survey (see Exhibit 4 above) and the 1968 survey (see Exhibit 3 - Volume 30, Page 64A of the Charlotte Land Records above), which delineate the former "Mitchell Property" (i.e. Lot 1B - see Figure 1 below). A note will be added to the survey indicating that Lot 1A and Lot 1B have been merged as a condition of the Planning Commission decision PC-17-75-BA.
 - c. Obtain all related permits (or their exemptions).
3. Any future deed conveying the property owned by the Thomas C. Henneberger Estate, comprising Lot 1A and 1B, shall describe them as one parcel.
4. Once the lands have been adjusted to their respective parcels they cannot be conveyed separately unless a new application for a subdivision is submitted and approved by the Planning Commission.

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 August 3, 2017: Jeff McDonald (Chair), Peter Joslin (Vice Chair), Charlie Pughe, David Kenyon, 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:

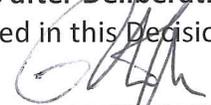
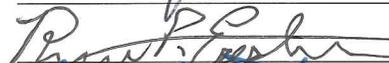
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Figure 1. Map of 2017 Boundary Adjustment for 1830 Greenbush Road

