

This 14<sup>th</sup> day of December A.D. 20 18  
 at 10 o'clock 30 minutes A m and  
 recorded in vol. 236 on page 57-65  
 A Christina Town Clerk

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

**Marvin Fishman and Doreen Kraft**  
**Final Plan Application for a 2-lot Minor Subdivision / Boundary Adjustment at 197 Oak Hill Road**  
**Application # PC-18-167-SD**

**Introduction and Procedural History**

This proceeding involves the review for a 2-Lot Minor Subdivision / Boundary Adjustment submitted by Marvin Fishman and Doreen Kraft for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on September 18, 2018. A notice of public hearing was published in "The Citizen" newspaper on October 11, 2018. A hardcopy of the notice was mailed to all adjoining landowners, which was also posted at the following three locations: the Town Office Building, the Brick Store, and Spear's Corner Store on October 5, 2018.

This application proposes to: **1.** Subdivide the 10.6-acre property located at 197 Oak Hill Road within the Rural (RUR) District into two lots, and **2.** Adjust acreage between the southerly adjoining Schofield property located at 951 Roscoe Road. A Sketch Plan Review letter (**PC-18-105-SK**) was issued from the Planning Commission on August 23, 2018 after one public hearing, which occurred on July 19, 2018. The Planning Commission undertook a prior Sketch Plan Review (**PC-17-86-SK**) for the Fishman-Kraft property at a public meeting held on August 3, 2017. However, the concomitant Sketch Plan Review letter that was issued on September 22, 2017 had expired on March 22, 2018.

A site visit to the property took place on August 3, 2017 just prior to the aforementioned Planning Commission meeting held that evening. Planning Commissioners attending the visit included Peter Joslin (Vice-Chair), Dick Eastman, David Kenyon, and Charlie Pughe. Additional attendees included the applicant, Marvin Fishman and Charlotte Town Planner, Daryl Benoit.

The subdivision/boundary adjustment application was considered by the Planning Commission at a public hearing on November 1, 2018 at approximately 7:30 PM. Present at the hearing were the following members of the Planning Commission: Peter Joslin (Chair), Gerald Bouchard, Dick Eastman, Charlie Pughe, Marty Illick, David Kenyon, and Shawn Coyle. Additional participants and attendees included: the Town Planner; the applicants Marvin Fishman and Doreen Kraft; and others.

**Exhibits**

The following exhibits were submitted for the application:

1. Completed application form signed by Marvin Fishman;
2. Draft Plat Plan of the Fishman property;
3. Proposed map: "Plat showing a subdivision survey of lands of Doreen Kraft & Marvin Fishman – 197 Oak Hill Road – Charlotte, Chittenden County, Vermont" (dated May 29, 2018) by Ronald L. LaRose, No. 272, LaRose Surveys, P.C., Bristol, Vermont;

4. Letter (dated June 30, 2017) from Ann (Sandy) L. Schofield authorizing *"the exchange of one acre, more or less"* between Fishman/Kraft and Schofield;
5. Sketch Plan Review; Planning Commission Letter (PC-18-105-SK Fishman), dated August 23, 2018;
6. Map Slide 11, Volume 3, Page 5; Boundary Survey - "Portion of Property of Green Mountain Land Trust, Inc. Chittenden County, Charlotte, VT." (dated July 29, 1973) by Ronald L. La Rose, Reg., No. 272 Land Surveyor, Bristol, Vermont;
7. Charlotte Land Records – Volume 123, Page 429 (January 30, 2002) Conveyance from Godfrey/Boudreau to Fishman/Kraft with reference to access ROW; Volume 85, Page 225-226 (May 26, 1995) Conveyance of 10.5 acre parcel from Surette to Godfrey/Boudreau; Volume 49, Pages 74-76 (August 12, 1986) Conveyance of 10.5 acres from Fishman to Surette; Volume 37, Page 133 (December 21, 1979) 25' utility easement from NW side of Roscoe Rd. 100' in easterly direction to GMP pole #9; Volume 34, Page 149 (October 8, 1976) Conveyance of 10.5 acre undeveloped parcel from Green Mountain Land Trust, Inc. to Fishman; Volume 34, Page 136 (September 30, 1976) 60' ROW for use in common with the abutting Margaret Olson property to the east;
8. Planning Commission Minutes from meeting held on *November 1, 2018*;

#### **Regulations in Effect**

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

#### **Findings**

##### Background

1. Marvin Fishman and Doreen Kraft own a 10.6-acre property located at 197 Oak Hill Road within the Rural Zoning district (RUR).
2. This application (based on the PC-18-105-SK Sketch Plan Review) proposes to subdivide the 10.6 acre lot into: **Lot 1** (5.56 acres) to the northwest containing the existing house, garage, and shed; and **Lot 2** (5.2 acres) an undeveloped lot with a proposed house site. The Boundary Adjustment along the southerly side of the property would convey 1.14 acres to Fishman-Kraft from neighbor Schofield, where 1.0 acre would be conveyed to Schofield from Fishman-Kraft to accommodate the installation of a Fishman-Kraft septic system.

##### 3.2(D)(2) Road, Driveway and Pedestrian Access Requirements

*"All roads, driveways, and intersections shall be designed and constructed in accordance with the Town of Charlotte "Road and Driveways Standards" as most recently amended. . ."*

The subdivision proposes to create two lots, which would increase the number of house sites or driveways served by Oak Hill Road to six (6) lots. The *"Recommended Standards for Developments and Homes"* (adopted September, 1997) state:

*"They are to be a minimum of 18 feet wide with 2 foot wide shoulders with a minimum of 18" of gravel with a 4" crusher run stone wearing surface. The usable road must bear the weight of a 29,000 lb. fire truck on all 18' of road."*

The improvement would only apply to the length of road originating from the Roscoe Road intersection to the first driveway that is proposed to be constructed for **Lot 2** (but not further as the road curves northward). Furthermore, since the road is greater than 800' in length, an emergency vehicle turnout will need to be constructed somewhere near its halfway point (in this instance, within the vicinity of the second bend of the road near the driveway access to the Cohen property). Where the 1997 standards recommend the turnout be 12' wide by 35' long, the Charlotte Volunteer Fire & Rescue Services recommend 15' wide by 50' long. However, as the 1997 standards have not yet been updated, the Planning Commission may only require that the 1997 standards are followed.

## 7.2 General Standards - Areas of High Public Value

1. Primary Agricultural Soils (Prime and Statewide - PAS): About 1-2 acres of Statewide soils exist on the property to the south and east, according to the *USDA Natural Resources Conservation Service (NRCS)* GIS database.
2. Steep Slopes (>=15%): About 3 acres of 15-20% slope are identified along the south and the north of the parcel.
3. Flood Hazard Areas: The property has been identified within the "Area of Minimal Flood Hazard" within the FEMA National Flood Hazard Layer (NFHL).
4. Special Natural Areas: Lewis Creek exists about 800 feet to the north of the property.
5. Wildlife Habitat: *Significant Forest Habitat* comprises the majority of the property (identified within the GIS layers of the "*Charlotte Significant Wildlife Habitat Map and Database*").
6. Scenic Views and Vistas: According to the Roscoe Road, to the east, is the nearest Town Highway and is classified as a "*Most Scenic Public Highway*" according to 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. . ."*

1. The existing lot does not have a designated building envelope, nor does the survey indicate any building envelopes for proposed **Lots 1** or **2** (see Exhibit 3 above).
2. The Planning Commission has advised the applicant during the public hearing for the application and during the Sketch Plan Review that building envelopes should be designated for Lots 1 and 2 to protect the *Significant Forest Habitat* and the big oak tree on the eastern side of the existing property. The Sketch Plan Review letter (See Exhibit 5 above) further advised that the size of the building envelopes should measure about a half-acre in size.

## 7.6 Water Supply / 7.7 Sewage Disposal

1. Both (proposed) lots for the 2-lot subdivision would have discrete wells. The **Lot 1** wellhead is already in-place for the existing house. A proposed wellhead location has been identified by the applicant's consultant for proposed **Lot 2** (see Exhibit 3 above).
2. A septic tank and leachfield currently exist for **Lot 1**. **Lot 2** has been identified by the applicant's consultant as capable of hosting a septic system, where the Boundary Adjustment would allow for a discrete septic field to be developed on **Lot 2** whenever it becomes necessary (see Exhibit 3 above).

### Decision

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a 2-Lot Minor Subdivision / 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 update the survey plat to indicate:
  - a. A one half-acre sized building envelope around the current house and accessory structures on **Lot 1**.
  - b. A one half-acre building envelope around the proposed house site on **Lot 2**.
  - c. The footprint of the big oak tree discussed in Finding 7.2(E) above.
  - d. The footprint of the widened portion of Oak Hill Road and the halfway point emergency vehicle turnout discussed in Finding 3.2(D)(2) above.
3. 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 the survey pins in the field as indicated on the survey.
4. Prior to the issuance of the Certificate of Occupancy for a house to be constructed on **Lot 2**, the applicant shall:
  - a. Increase the width of the portion of Oak Hill Road as per Finding 3.2(D)(2) above.
  - b. Construct of the halfway point emergency vehicle turnout as per Finding 3.2(D)(2) above.
5. All forested area identified outside of the aforementioned building envelopes for **Lot 1** and **Lot 2** shall remain in its natural *Significant Forest Habitat* state in keeping with the "*Charlotte Significant Wildlife Habitat Map and Database*".

**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, Marty Illick, David 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: | <u>          Marty Illick          </u>    | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>12-13-18</u>   |
| 2. Signed: | <u>          Chris St. John          </u>  | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>12-13-18</u>   |
| 3. Signed: | <u>          Gerald Bouchard          </u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>12/14/2018</u> |
| 4. Signed: | <u>          Marty Illick          </u>    | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>12/14/2018</u> |
| 5. Signed: | _____                                      | For / Against  | Date Signed: _____             |
| 6. Signed: | _____                                      | For / Against  | Date Signed: _____             |
| 7. Signed: | _____                                      | For / Against  | Date Signed: _____             |