

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

**Carl and Dorothy Partelow / John and Lisa Hauenstein / Ryan Considine
Final Plan Application for a Minor Subdivision Amendment for 1578 and 1614 Ferry Road
Application # PC-18-33-SA**

Introduction and Procedural History

This proceeding involves the review of an application for a Minor Subdivision Amendment submitted by Ryan Considine (the authorized representative for Dorothy Partelow and the Hauenstein Revocable Living Trust) for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on March 8, 2018. A notice of public hearing was published in *The Citizen* newspaper on April 12, 2018. A hardcopy of the notice was mailed to all adjoining landowners on April 18, 2018, and posted at the following three locations: the Town Office main entrance bulletin board, the Old Brick Store, and Spear's Corner Store on April 13, 2018. Electronic notice was also posted on the Charlotte Town website calendar.

A site visit was conducted at the properties at 1578 and 1614 Ferry Road on Thursday, May 3, 2018 at 6:00 PM, just prior to the public hearing held by Planning Commission at their regular meeting scheduled for 7:00 PM that evening. Present at the visit were Commissioners Peter Joslin (Chair), Richard Eastman, and Gerald Bouchard; applicant representative Ryan Considine; Town Planner Daryl Benoit; and Nancy Larrow.

Present at the public hearing were the following members of the Planning Commission; Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, Richard Eastman, and Shawn Coyle. The applicant representative Ryan Considine and the Town Planner also participated in the hearing.

Exhibits

1. Application Exhibits for a Minor Subdivision Amendment, including; **A.** PC-18-33-SA application form signed by Dorothy Partelow and John Hauenstein, **B.** Authorization letter for Ryan Considine to represent Dorothy Partelow for the proceedings, **C.** Advisory letter from the Town Engineer (Brian Trembeck of Lamoureux & Dickinson Consulting Engineers, Inc.) to the Town Administrator (Dean Bloch) regarding a possible exemption from the permitting requirements of the State Wastewater System and Potable Water Supply Rules, dated February 15, 2018;
2. *Map Slide 164, Page 3*; Survey – "Property Plan, Carl & Dee Partlelow, Charlotte, Vermont, 1578 Ferry Road", by William A. Robenstein (No. 60), dated: 16 Apr 2009;
3. *Map Slide 146, Page 6*; subdivision survey plat of a previously approved subdivision amendment titled "David & Audrey Fredenburg – 1578 Ferry Road, Charlotte, VT – Subdivision Survey" by Kevin R. Larose (No. 707), dated 25 Jan 2006;
4. *Map Slide 26, Book 4, Page 48*; Survey – "Property of Richard J. Vanderslice & Marjorie A. Grant", by Ronald L. Larose, L.S. (No. 272), dated April 16, 1980;
5. Planning Commission Decision; In Re Application of Carl and Dorothy Partelow And John and Lisa Hauenstein Final Plan Application For A Subdivision Amendment Application #PC-09-04, Approved by the Planning Commission: April 2, 2009.

6. Sketch Plan Review; Planning Commission Letter (PC-09-02-SK), dated February 20, 2009.
7. Planning Commission Decision; In Re Application of David and Audrey Fredenburg Final Plat Hearing For A Two-Lot Subdivision Application #PC-05-46, Approved by the Planning Commission: November 22, 2005.
8. Charlotte Land Records – Volume 219, Pages 376-377 (June 30, 2015) Warranty Deed for Hauenstein; Volume 175, Page 408-08 (October 16, 2008) Warranty Deed for Partelow. references ROW over the easterly side of Lot 1 and the 2009 2-Lot subdivision; Volume 41, Page 240-41 (March 11, 1983) Conveyance from Vanderslice to Fredenburg & articulated “exclusive easement and Right of Way 60 feet in width along westerly side of ‘Parcel A’ for vehicular and pedestrian traffic to and from ‘Parcel B’”;
9. Town of Charlotte Land Use Permit, #08-47-TM (December 1, 2008), for the construction of a “new 3-car garage with attached mudroom, covert existing garage to family room/office, new covered front porch and covered walkway to new carport.”;
10. Letter from William A. Robenstein, Professional Land Surveyor, Verification of the survey points being set (dated April 7, 2009);
11. Planning Commission Minutes from meeting held on *May 3, 2018*.

Regulations in Effect

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Findings

Background

1. Carl and Dorothy Partelow own a 5.26 acre property located at 1578 Ferry Road (Lot #1, which abuts Ferry Road), and the Hauenstein Revocable Living Trust owns the northern adjoining 5.14 acre property located at 1614 Ferry Road (Lot #2). Both properties are located along the northern side of Ferry Road within the Rural Zoning district (RUR).
2. This application is a resubmission of a previously expired 2009 decision (i.e. *PC-09-04-SA recorded within the Charlotte land records, Volume 178, Pages 352-354*), which intended to exchange sliver areas (each of 0.043 acres) between Lot #1 and Lot #2, for the purpose of providing a conforming 50’ side yard setback for the garage upon Lot #1 that was constructed within the setback during 2008.
3. The 2009 decision expired because the land was never exchanged in deed between the applicants. According to the May 3, 2018 minutes;
“Mr. Considine explained that the property is under contract to sell and it was discovered that the boundary adjustment was never completed. A survey was submitted that meets the setback requirements. It is a straight forward exchange of land between Lots 1 and 2. Nothing has changed since 2009. . .”
4. The previous 2005 subdivision (PC-05-49) created Lot #1 and Lot #2 from a 10.4 acre parent parcel (formerly known as ‘Parcel A’) that had been approved by the Planning Commission on June 10, 1980.

5. The adjustment of the property will not result in any substantive change to the previous 2005 subdivision or the conditions of approval.
6. The survey pins for the property exchange were set in 2009 by the applicants' surveyor (see Exhibit 10 above) and would not need to be changed for the purposes of the current application.
7. The advisory letter from the Town Engineer (see Exhibit 1C, above) states:

"The exemption in the Rules (§1-304(a)(11), p. 24) is not well-worded. However, the situation you're describing is straightforward. Each lot is being reduced by 0.043 acres, then increased by 0.043 acres. 0.043 acres is $0.043/5.26 = 0.8\%$ of Lot 1, and $0.043/5.14 = 0.8\%$ of Lot 2. Because neither lot is losing more 2% of its area, they would meet the exemption. The State has a boundary line adjustment exemption form (attached) that asks the involved parties to submit the form and a plan to the Regional Office and the Land Records (see step 3). If it's exempt, the State can't dictate that the involved parties comply with this directive. However, attorneys in the future will be looking for this paperwork. I would recommend that the landowners complete the form and record it with the plan in the Land Records."

7.2 General Standards - Areas of High Public Value

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

1. Primary Agricultural Soils (Primary and Statewide): The majority of Lot #1 consists of *Prime Agricultural* soils with about 0.6 acres along the eastern boundary consisting of *Statewide Agricultural* soils. Small areas of *Statewide Agricultural* soils have been identified on Lot #2 (according to the USDA-NRCS data).
2. Surface Waters, Wetlands, and associated buffer areas: In September 2005, Class II wetland was mapped on the adjacent property to the northeast of Lot #2 by the Vermont Agency of Natural Resources, State Wetlands Coordinator.
3. Conserved Land on Adjacent Parcels: 63.14 acres of conserved land exists via an Open Space Agreement (OSA) with the Town, on the property to the south of Lot #1, across Ferry Road.

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 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 ensure the survey plat has been updated with the following:
 - a. The current property information, including references to adjoining properties.
 - b. Demarcation of all access and utility rights-of-way and easements upon the two properties.
 - c. The footprint of all of the existing driveways, water supply, and wastewater systems.
3. The properties associated with this Subdivision Amendment (two areas of .043 acres each) **will be conveyed between the parties to this application within 180 days, or this approval shall expire.**

4. Once the properties are conveyed, they will merge with the remainder of each parcel and cannot be conveyed separately unless an application for subdivision is submitted and approved.

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 May 3, 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>Charles W. Tughe</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed: <u>June 12, 2018</u>
2. Signed:	<u>Martina Illick</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed: <u>June 12, 2018</u>
3. Signed:	<u>Gerald A Bouchard</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed: <u>6/13/2018</u>
4. Signed:	<u>A. Coyle</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed: <u>June 14, 2018</u>
5. Signed:	_____	For / Against	Date Signed: _____
6. Signed:	_____	For / Against	Date Signed: _____