

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

**Jonathan Couture and Elisabeth Gerber**

**In re: Final Plan Application for a Minor Subdivision Amendment for Vineyard View Drive  
Application # PC-18-81-SA**

**Introduction and Procedural History**

This proceeding involves the review of an application for a Minor Subdivision Amendment submitted by Jonathan Couture for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as “the Regulations”). The application was received on May 16, 2018. A notice of public hearing was published in *The Citizen* newspaper on May 31, 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 May 25, 2018. Electronic notice was also posted on the Charlotte Town website calendar.

A site visit was conducted at the properties at 240 Vineyard View Drive on Thursday, June 21, 2018 at 6:30 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), David Kenyon, Charlie Pughe (Vice Chair), and Gerald Bouchard; and applicant Jonathan Couture.

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 Johnathan Couture; neighbors Tom and Nancy Smith of 264 Vineyard View Drive; and the Town Planner also participated in the hearing.

**Exhibits**

1. Application Exhibits for a Minor Subdivision Amendment, including: **A.** PC-18-81-SA application form submitted by Jonathan Couture, **B.** Final Plat – Major Subdivision Modification – Windever Farms – Properties of Jonathan R. Couture and Elisabeth A. Gerber – 178 State Park Road, Charlotte, Vermont (dated April 2018), Prepared by Stuart J. Morrow, Shelburne, Vermont;
2. Exhibits submitted by neighbors Tom and Nancy Smith, including: **A.** Letter to the Planning Commission from Tom Smith, dated June 10, 2018, **B.** Map of proposed building envelope for 264 Vineyard View Drive;
3. *Map Slide 191, Page 2; Survey – “Final Plat Major Subdivision Modification – Windever Farm – Properties of Jonathan E., Gerald J. and Virginia M. Couture and Thomas J. and Nancy S. Smith - 173 State Park Road, Charlotte, Vermont”*, by Stuart J. Morrow (No. 565), dated: April 2015;
4. *Map Slide 170, Page 6; Subdivision survey - “Final Plat Major Subdivision – Windever Farm – Property of Clark W. III and Suzanne G. Hinsdale - 173 State Park Road, Charlotte, Vermont”* by Stuart J. Morrow, Consulting Land Surveyor (No. 565), Shelburne, Vermont dated: Sept. 2009;
5. Planning Commission Decision: In Re: Jonathan Couture, Final Plan Application for a Major Subdivision / Planned Residential Development Amendment #PC-15-16, Approved by the Planning Commission: August 24, 2015.

6. Planning Commission Decision: In Re: Jonathan Couture, Preliminary Plan Application for a Major Subdivision / Planned Residential Development Amendment #PC-15-14, Approved by the Planning Commission: July 30, 2015.
7. Planning Commission Decision: In Re: Application of Clark Hinsdale, III and Suzanne Hinsdale, 173 State Park Road – Final Plan Hearing for A Five-Lot Subdivision and Planned Residential Development Application #PC-10-25, Approved by the Planning Commission: August 23, 2010.
8. Charlotte Land Records – Volume 226, Pages 661-664 (December 22, 2016) Warranty Deed for Lot #4; Volume 193, Pages 263-270 (May 24, 2011) Warranty Deed for the subdivision;
9. Planning Commission Minutes from meeting held on *June 21, 2018*.

### Regulations in Effect

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

### Findings

1. Jonathan Couture and Elisabeth Gerber own a 14.94 acre parcel (**Lot #3**) located at 240 Vineyard View Drive that exists primarily within the Rural Zoning District (RUR) and partially within the Conservation District (CON). Thomas and Nancy Smith own an adjoining property to the north comprising a 4.08 acre parcel (**Lot #1**) and a 5.02 acre parcel (**Lot #2**) that are co-located at 264 Vineyard View Drive within the Rural (RUR) Zoning district. Each of the aforementioned lots are indicated within the 2015 Windever Farm Subdivision plat (see **Exhibit 3** above).
2. This application has been submitted as a Minor Subdivision Amendment to a previously approved 5-Lot Major Subdivision decision (i.e. **PC-10-25**) that was undertaken as a Planned Residential Development (PRD) in 2010. A Major Subdivision Amendment/PRD was subsequently approved by the Planning Commission in 2015 (i.e. Final decision **PC-15-16**, and Preliminary decision **PC-15-14**), which changed the configuration of the lots (reflected in the surveys in **Exhibit 3** and **4** above).
3. This application seeks to subdivide existing **Lot #3** into a 1.63 acre parcel (*to become the new Lot #3*) and a 13.31 acre parcel (*to become the new Lot #2*), and combine existing **Lots #1** and **#2** into a 9.09 acre parcel (*to become the new Lot #1*). Subdivision **PC-10-25** was previously approved as a PRD, which allows for the proposed **Lot #3** to be less than the Rural Zoning District dimensional *minimum lot area*.
4. The application does not propose to create any additional lots and would retain the existing conserved land (that was required during the previous subdivision), and therefore does not trigger further acreage to be added into conservation. There are no proposed changes to the previously approved Open Space Agreement (OSA) associated with the original 5-Lot Subdivision **PC-10-25**.
5. The application proposes that a smaller portion of its previously approved building envelope for **Lot #1** be retained for the potential siting of a future accessory structure. The 2015 survey (**Exhibit 3** above) demarcates the location of the existing 150'x150' building envelope (totaling

0.516 acres), where the proposed survey (**Exhibit 1B** above) demarcates a reduced 75'x75' building envelope (totaling 0.129 acres).

6. However, the owners of the proposed **Lot #1** wish to substantially increase their current building envelope from 0.52 acres to 1.55 acres (see **Exhibit 2B** above), which could have significant impact on the viewshed from Mount Philo State Park. This is addressed in Finding 7.2(E) below.

### 3.2 Road, Driveway and Pedestrian Access Requirements

1. Access to the subdivision lots are currently served by Vineyard View Drive a private access road, which entails a fifty-foot (50) access right-of-way originating at the north side of State Park Road, located about 0.4 miles west of Mt. Philo Road, which currently serves five (5) house sites.
2. It recently came to the attention of the Town that Vineyard View Drive is currently too narrow to meet the requirements of the standard and the subdivision decision **PC-10-25**. Finding 29 of that decision stated:

*"The application narrative states that the road is to be widened by two feet in order to meet the Fire and Rescue Standards."*

3. However, the decision did not categorically require the widening of the driveway as a condition for granting subdivision approval.

The *"Recommended Standards for Developments and Homes"* states that driveways serving 1 to 5 house sites: *"shall be a minimum of 14' wide with a minimum 18" of gravel with 4" crusher run wearing surface."*

The standard further states that:

*"All driveway entrance intersections must be at least 18' wide for the first 20' of driveway, tapering to 14' to allow for emergency vehicles to turnaround."*

In April 2018, several measurements taken along Vineyard View Drive by the Zoning Administrator revealed that most sections of the driveway are between 12 to 13 feet in width. Where the section of driveway abutting the first residence at 100 Vineyard View Drive (**Lot #4**) was found to meet the standard, the driveway fails to meet it as it narrows northward toward the second residence at 87 Vineyard View Drive (**Lot #5**), about 400 feet north of State Park Road.

4. The existing driveway should be consistent with the 1997 *"Recommended Standards for Developments and Homes"*.

### 7.2 General Standards - Areas of High Public Value

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

1. Land in active agricultural use: The land on the property is not currently in agricultural use.

2. Primary Agricultural Soils (Primary and Statewide): Most of the land on the properties has been identified as Statewide soil according to the USDA Natural Resources Conservation Service GIS database (according to the USDA-NRCS data).
3. Surface Waters, Wetlands, and associated buffer areas: The Kimball Brook runs along the existing **Lot #3**.
4. Special Natural Areas (SNA): The property is within the viewshed of the Mt. Philo State Park (identified as an SNA within the Town Plan), across Mt. Philo Road to the east. The proposed increase of the building envelope on proposed **Lot #1** may impact Mt. Philo's westward viewshed.
5. Wildlife Habitat: *Significant Forest Habitat* and *Significant Aquatic Habitat* exists on most of Couture's parcel (existing **Lot #3**). *Significant Linkage Habitat* exists on most of the Smith's parcel (existing **Lots #1** and **#2**) and the northern portion of Couture's parcel (existing **Lot #3**), delineated within the GIS layers of the "Charlotte Significant Wildlife Habitat Map and Database".
6. Water Supply Source Protection Areas (SPAs): There are no *Groundwater Source Protection Areas* nor *Surface Water Protection Areas* on the property.
7. Scenic Views and Vistas: The properties are within the viewshed of Mt. Philo State Park and Mt. Philo Road, which has been identified as a 'Most Scenic Roadway' within the Charlotte Town Plan.
8. Conserved Land on Adjacent Parcels: There are currently 13.68 acres in an Open Space Agreement with the Town within the subdivision. There are 55.21 acres in an easement with the Charlotte Land Trust (CLT) adjoining to the west of the subdivision, and another 40.45 acres of CLT easement adjoining to the southeast, across State Park Road.

#### 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. . ."
2. The previous Subdivision Amendment (**PC-15-16**) approved the creation of two building envelopes on the existing **Lot #3** (one for the primary and the other for the accessory dwelling), and mitigated potential impact by reducing the size of the preexisting building envelope for the primary house on the lot. According to *Finding 25* in the Final decision:
 

*"The previously approved building envelope for the primary structure on Lot 3 has been reduced in size so that the net buildable area on Lot 3 equals that as approved under PC-10-25."*
3. Each of the resulting building envelopes created in subdivision **PC-10-25** and in subdivision amendment **PC-15-16** are less than one (1) acre in size. The total acreage of the two building envelopes for proposed **Lot #1** should not exceed one (1) acre.

4. To retain the same density of development of the parcels within the subdivision, and to maintain the character of the area, the acreage of buildable area for proposed **Lot #1** should be designed to a similar size as those of its neighboring parcels. The proposed reduction of the existing building envelope from 0.516 acre to 0.129 acre on proposed **Lot #1** would allow for a minimum 0.9 acre building envelope to be created for the existing primary house.
5. As there is precedent to allow two building envelopes to exist on a single parcel within the subdivision (e.g. existing **Lot #3** created by **PC-15-16**), the owners of proposed **Lot #1** should be allowed an additional building envelope to be created for the primary house.
6. The current location of the building envelope on proposed **Lot #1** (i.e. existing **Lot #2**) should be retained, because it was designed to mitigate the impact upon the scenic viewshed as per decision **PC-10-25**, which states in its Finding 8(A):

*“8. The proposed building envelopes will (or will not) impact areas of high public value as follows:*

- A. *A dwelling located within the building envelope on Lot 2 will be prominent from Mount Philo Road and Mount Philo State Park. This will be an undue adverse impact on the exceptionally scenic views in these locations. At the hearing, the applicant offered to require the dwelling on the lot be earth-toned. However, the Planning Commission believes this impact can best be mitigated by adjusting the building envelope so that the dwelling will not be situated on the height of land. This adjustment is described in Condition 1 below.”*

Condition 1(A) of decision **PC-10-25** stated:

*“The building envelope on Lot 2 will be amended so all sides are 150 feet, and the easterly boundary will be shifted 70 feet to the west.”*

## **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, lot acreage, acreage of all building envelopes, the additional building envelope for the primary dwelling for proposed **Lot #1** (not to exceed 0.9 acre, as per the Findings of 7.2(E) above), and references to adjoining properties.

- b. The proposed 75'x75' accessory building envelope proposed for **Lot #1** shall be retained within the same footprint as the 150'x150' that was approved in **PC-15-16**.
  - c. Add the full footprint of the updated driveway as discussed in the Findings of 3.2 above.
3. Vineyard View Drive shall be surfaced with non-white crushed stone.
  4. Prior to conveyance of, or issuance of the Certificate of Occupancy for proposed Lot #3, the applicant shall:
    - a. Increase the width of the driveway as per the Findings of 3.2.
  5. Once existing Lots #1 and Lot #2 are merged they 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 June 21, 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:		<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed: <u>8/2/18</u>
2. Signed:		<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed: <u>8/2/18</u>
3. Signed:		<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed: <u>8/2/18</u>
4. Signed:		<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed: <u>8.2.18</u>
5. Signed:	_____	For / Against	Date Signed: _____
6. Signed:	_____	For / Against	Date Signed: _____
7. Signed:	_____	For / Against	Date Signed: _____