

CHARLOTTE TOWN CLERK'S OFFICE  
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This 4<sup>th</sup> day of October A 2019  
at 12 o'clock 00 minutes PM and  
recorded in vol. 239 on page 395-398  
Attest Mary A Mead Town Clerk

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

**David and Christie Garrett (Richard and Margaret Eastman; and Vince and Susan Crockenberg)  
Final Plan Application for a Boundary Adjustment for 1277, 1163, and 1321 Thompson's Point Road  
Application # PC-19-130-BA**

**Introduction and Procedural History**

This proceeding involves the review for a Boundary Adjustment application submitted by Wade B.C. Weathers, Jr. (of LandVest, Inc.) on behalf of David and Christie Garrett; Richard and Margaret Eastman; and Vince and Susan Crockenberg for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application in total was received by the Charlotte Planning & Zoning Office on July 29, 2019. A notice of public hearing was published in "The Citizen" newspaper on August 1, 2019. A hardcopy of the notice was mailed to all adjoining landowners and was posted at the following three locations: the Town Office Building, the Brick Store, and Spear's Corner Store on August 7, 2019. An electronic notice of the hearing was also posted on the Town website meeting calendar.

The application proposes three boundary adjustments between three parcels located at 1277 (Garrett), 1163 (Eastman), and 1321 (Crockenberg) Thompson's Point Road. Three Sketch Plan Review letters have been issued from the Planning Commission; one (PC-17-61-SK) on August 17, 2017 that expired; a second (PC-18-30-SK) on May 29, 2018 that also expired; and a third (PC-19-21-SK) on May 10, 2019, which was issued after a public hearing that took place on April 4, 2019 and did not expire. The site visit to the property took place before the Sketch Plan Review (for PC-17-61-SK) public meeting held on July 6, 2017. The site visit was attended by Planning Commissioners Peter Joslin (then Vice-Chair), Dick Eastman (who recused himself from the formal Planning Commission meeting that evening), Marty Illick, and Charlie Pughe; the applicants David and Christie Garrett; Wade Weathers; and the Town Planner.

This Boundary Adjustment application was considered by the Planning Commission at a public hearing held on August 22, 2019 at approximately 7:25 PM. Present at the public hearing were the following Planning Commissioners: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Jim Faulkner, Gerald Bouchard, and David Kenyon. Additional participants and attendees included the Town Planner, Vince Crockenberg, Susan Crockenberg, David Garrett, and Wade Weathers.

**Exhibits**

The following exhibits were submitted for the application:

1. Completed application form signed by David Garrett and Richard Eastman, received on July 19, 2019;
2. Proposed draft survey map: "Boundary Line Adjustment & Subdivision Plat – of Lands Owned by David W. & Christie C. Garrett – 1277 Thompsons Point Road – Town of Charlotte, County of

Chittenden, State of Vermont" (dated: Oct 2017) prepared by Seth W. Kittredge, L.S. 060709, Kittredge Land Surveying, PLLC, Vergennes, Vermont (Sheet 1 of 2, and Sheet 2 of 2);

3. Sketch Plan Review; Planning Commission Letter (**PC-19-21-SK** Garrett-Weathers), dated May 10, 2019;
4. Map Slide 28, Vol 4, Page 55; Survey - "Subdivision of Property Belonging to Richard Eastman – Thompsons Pt. Rd., Charlotte, VT." (dated: August 1980 / revised 16 July 1982) by Mark V. Ward, No. 498 (and drawn by P. Weisel), Palmer Company, Ltd., So. Burlington, Vermont;
5. Map Slide 24, Book 4, Page 3; Survey - "Boundary Survey of Property Belonging to Brian & Christine Garvey – Thompsons Pt. Rd., Charlotte, VT." (dated: August 1980 / revised 6 May 1981) by Mark V. Ward, No. 498 (and drawn by P. Weisel), Palmer Company, Ltd., So. Burlington, Vermont;
6. Wastewater System and Potable Water Supply Permit (Case Number: WW-138-1504) – David Garrett, 1277 Thompson's Point Road, Charlotte, VT 05445 (approved October 31, 2016);
7. #2018-450: 1279 Thompson Point Road Wetland Classification Report (dated: September 18, 2018);
8. Charlotte Land Records – Volume 60, Pages 278-281 (3 May and 23 Aug 1989) Extinguishment of easements; Volume 60, Pages 486-487 (1989) Easement ROW for water; Volume 60, Pages 483 (1989) Termination of water rights; Volume 41, Pages 259-262 (3 May 1983) Conveyance of 14.1 acres; Volume 39, Pages 108 (3 Aug 1981) Easement to draw water from well and maintain waterlines;
9. Planning Commission Minutes from meeting held on *April 4 and August 22, 2019; August 10, 1982; June 23, 1981; and January 8, 1980;*

### **Regulations in Effect**

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Town of Charlotte Recommended Standards for Developments and Homes, 1997

Vermont Agency of Natural Resources, Wastewater System and Potable Water Supply Rules, 2019

### **Findings**

#### Background

1. David and Christie Garrett own a *14.1 acre* property located at 1277 Thompson's Point Road, comprising two parcels: a *5.2 acre* lot, and an *8.9 acre* lot.
2. Richard and Margaret Eastman own the westward adjoining *5.2 acre* property located at 1163 Thompson's Point Road.
3. Vincent and Susan Crockenberg own another westward adjoining *0.57 acre* property located at 1321 Thompson's Point Road.
4. Each of the aforementioned properties exist within both the Charlotte Rural (RUR) and Shoreland (SHR) zoning districts.

5. This application proposes three (3) boundary adjustments, including:
- a. Adjustment of the boundary by about 90 degrees between the two adjoining parcels (owned by the David and Christie Garrett), so that the boundary is a more regular shape. Currently both parcels have lake access, where the easternmost 8.9 acre lot is really too thin to develop as most of it is only about 200' wide. This application proposes changing the configuration to:
    - **Lot #1** – a 7.75-acre parcel with an existing house and barn, and
    - **Lot #2** – a 7.34-acre undeveloped parcel proposed with a 1.3 acre building envelope outside of the State 250' shoreline protection buffer.
  - b. An exchange between 1277 and 1163 Thompson's Point Road, where 0.54 acres is conveyed from the Eastman property to Garrett's **Lot #1** and 0.77 acres is conveyed from Garrett's **Lot #2** to the Eastman property.
  - c. An exchange between 1321 and 1277 Thompson's Point Road, where a sliver area owned by Garrett traverses over Crockenberg's encroaching garage will be conveyed to Crockenberg.

### 3.2(D) General Regulations – Roads and Driveways

*“...Driveways, which may serve up to two (2) lots, and private roads, which serve three (3) or more lots, must be designed and constructed to meet the standards as set forth in the Town of Charlotte's 'Road and Driveway Standards' as most recently amended.”*

- a. The boundary adjustment proposes to create a second buildable lot (e.g. **Lot #2**), which would increase the number of house sites served by the existing driveway. The *“Recommended Standards for Developments and Homes”* (adopted September, 1997) state that the driveway serving both **Lots #1** and **#2** should measure a minimum of 14' wide, with a minimum of 18" of gravel, and a 4" crusher run wearing surface. The usable road must bear the weight of a 29,000 lb. (14 ½ ton) fire truck on all 14' of road. All driveway intersections must be at least 18' wide for the first 20' of the driveway, tapering to 14' to allow for emergency vehicles to turnaround.
- b. As the driveway is longer than 800' in travelled length, a vehicle turn-out measuring a minimum of 12' wide by 35' long near the halfway point (or every 800') shall be constructed along the driveway. The *Charlotte Volunteer Fire & Rescue Services* currently recommends a greater sized turnout to measure 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

The following Areas of High Public Value (AHPV) were identified on the properties:

- a. Primary Agricultural Soils (Primary and Statewide - PAS): The property is composed entirely of Statewide agricultural soils, according to the *USDA Natural Resources Conservation Service (NRCS)* GIS database.

- b. Flood hazard areas: Most of the property north of the shoreline is classified on the FEMA Hazard Area Only map as “*Area of Minimal Flood Hazard*”, which is identified within the FEMA *National Flood Hazard Layer (NFHL)*. The area of land along the lake shore is classified as Zone AE coastal floodplain.
- c. Surface waters, wetlands and associated setback and buffer areas: The Lake Champlain shoreline traverses the southern property boundary. Class III wetlands were identified within the open field that comprise the southern portion of **Lot #1** and portions of **Lot #2**, according to the wetland delineation indicated on the applicant’s survey (see **Exhibit 2** above).
- d. Shoreland setback and buffer areas: Existing **Lot #1** and **Lot #2** are each partially within the 150 ft. setback area for the Shoreland (SHR) zoning district. However, the proposed building envelope proposed for **Lot #2** is outside of the 250-foot lakeshore setback.
- e. Special Natural Areas (SNA): Thompson's Point site (R5), a “*rare plant community*” is identified as a SNA on page 2-17 of the 2018 Charlotte Town Plan.
- f. Wildlife Habitat: *Significant Forest Habitat* exists along the property boundary to the east and parcels to the north. *Significant Aquatic Habitat* exists along the property boundary to the east, on parcels to the north, and within the 150-foot buffer of the lakeshore. *Significant Linkage Habitat* exists on the entire property and on all of the abutting properties.
- g. Historic Districts, Sites, and Structures: The property is entirely within the “*Bucklin Estate Historic District*”, which was listed on the State Register of Historic Places by the Vermont Division for Historic Preservation on April 9, 1980 (Survey #: 0403-61).
- h. Scenic views and vistas: The property abuts Thompsons Point Road, identified within the Town Plan as a “*Most Scenic Public Road*”. However, it does not appear the proposed house would be visible from the road. It would be visible from Lake Champlain. As the Planning Commission retains the right to Site Planning with respect to building placement, it may consider mitigating any impact from the viewshed of the Lake (see the meeting minutes of August 10, 1982 listed in **Exhibit 9** above). However, during the Sketch Plan Review (see **Exhibit 3** above) the Planning Commission decided to forgo requiring Site Plan Review.
- i. Conserved land on adjacent parcels: The approximate 25-acre “*Black Willow*” parcel to the east is in an Open Space Agreement (OSA) with the Town. The 81.1 acre “*Black Willow/Foster*” parcel to the northeast is in a conservation easement with the Town and the Vermont Land Trust.

#### 7.2(E) General Standards – Building Envelopes

“...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. . .”

- a. The 1.069 acre building envelope proposed for **Lot #2** is demarcated with a one-hundred and fifty-foot (150') setback from the mean high water mark. The building envelope also conforms to the Rural (RUR) and Shoreland (SHR) zoning district fifty-foot (50') sideyard setbacks (see **Exhibit 2** above).

#### 7.6 Water Supply & 7.7 Sewage Disposal

- a. On October 31, 2016, the Town of Charlotte issued permit #WW-138-1504 (see **Exhibit 6** above), which approved (with conditions) a best fix for an existing mound septic system serving an existing seven-bedroom single-family dwelling, a three-bedroom accessory apartment, and an office with five-employees. This is the most recently known Water Supply and Wastewater permit approved for the property.
- b. According to the meeting minutes of August 22, 2019, the septic area is planned to be moved away from the lake and will be approved for 10 bedrooms. The existing wastewater system is planned for removal.
- c. According to the Vermont ANR, Wastewater System and Potable Water Supply Rules (e.g. **§ 1-304 Permit Exemptions**), a Boundary Line Adjustment would be exempt from the permitting requirements if *"the lot is reduced in size by no more than 2 percent"*. However, **Lot #1** containing the primary house is proposed to be reduced from 8.9 acres to 7.75 acres (by approximately 12.9%).
- d. An exemption from permitting requirements is also possible if the Agency of Natural Resources determines that the proposed Boundary Adjustment *"will not have an adverse effect on any existing potable water supply or wastewater system on the affected lots"*.
- e. The applicant should verify with the Charlotte Zoning Administrator if there are any permitting requirements that would need to be met resulting from this Boundary Adjustment.

#### **Decision**

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for the 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:
  - a. Submit a letter from the surveyor indicating that the survey pins have been set in the field as indicated on the survey.

- b. Verify with the Charlotte Zoning Administrator that any water supply and wastewater permitting requirements have been met for the purpose of the Boundary Adjustment approval.
3. Prior to the issuance of the Certificate of Occupancy for a house to be constructed on **Lot #2**, the applicant shall:
- a. Ensure the dimensional requirements of the driveway are in accordance with **Finding 3.2(D)(a)** above.
  - b. Construct at the approximate the halfway point an emergency vehicle turnout as per **Finding 3.2(D)(b)** above.

**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 August 22, 2019:** Peter Joslin (Chair), Charlie Pughe (Vice Chair), Gerald Bouchard, Marty Illick, Jim Faulkner, and David Kenyon.

**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>Gerald A Bouchard</u> | For / Against | Date Signed: | <u>10/03/2019</u> |
| 2. Signed: | <u>[Signature]</u>       | For / Against | Date Signed: | <u>10/03/2019</u> |
| 3. Signed: | <u>[Signature]</u>       | For / Against | Date Signed: | <u>10/03/2019</u> |
| 4. Signed: | <u>[Signature]</u>       | For / Against | Date Signed: | <u>10/3/2019</u>  |
| 5. Signed: | <u>Marta J</u>           | For / Against | Date Signed: | <u>10-3-2019</u>  |
| 6. Signed: | <u>Charlie Pughe</u>     | For / Against | Date Signed: | <u>10-3-2019</u>  |
| 7. Signed: | _____                    | For / Against | Date Signed: | _____             |