

**Development Review Board, Town of Fayston, VT  
Notice of Decision for Application No. 3476-3477**

**Applicant(s): Bruce Depper and Jane Goldstein**

**Parcel ID: #03-088.000**

**Reason for Application: Pond**

**Public Hearing Attendees:** Attending DRB Members: Jon Shea (Chair), Shane Mullen, Lindsay Browning, Mike Quenneville, and Jared Alvord; ZA: John Weir; Public: Gunner McCain, Kevin Powers, Jeff Halpin, Raymond Schenk, and Heidi Schenk

**Introduction and Procedural History:**

1. The Development Review Board applications were filed on June 18, 2018 requesting conditional use approval under Section 4.11 (E) of the Fayston Land Use Regulations for a pond. A copy of the application and supporting paperwork are available at the Fayston, VT town offices.
2. Notice of the hearing was properly published. On June 21, 2018 the legal warning for a public hearing for review of this application was published in the Valley Reporter. This warning was also posted at the Fayston municipal offices, as well as at both the Moretown and Waitsfield post offices.
3. Abutters to the property were properly notified of the hearing.
4. The application and plans were considered by the Development Review Board at a public hearing which occurred on July 10, 2018. The Development Review Board reviewed the application and plans under the Town of Fayston, VT Land Use Regulations, as amended June, 2018.

**The following exhibits were submitted to the Development Review Board:**

Exhibit A. Development Review Board applications #3476-3477

Exhibit B. Letter to adjoining landowners with project description

Exhibit C. Warning placed in the Valley Reporter on June 21, 2018. This warning was also posted at the Fayston municipal offices, as well as at both the Moretown and Waitsfield post offices.

**Findings:**

1. The Board found the application to be complete at a public hearing held July 10, 2018.

2. The applicant seeks conditional use approval to construct a pond. The subject property is parcel 03-088.000, located at 2789 Center Fayston Road, in the Town of Fayston, VT. Conditional use approval is requested pursuant to review under the Town of Fayston, Vermont Land Use Regulations, as amended June, 2018, Section 4.11 (E).

3. The property is located in the Rural Residential District as described on the Town of Fayston Zoning Map on record at the Town of Fayston municipal office, also described under Article 2, Table 2.4 of the Town of Fayston, VT land use regulations.

4. The applicant's parcel is adjacent to land owned by John and Monica Pieper, David Frank, Andrew Dimario, Brett and Elizabeth Bellknap, Michael and Lori Rush, Douglas and Carol Wilson, Frederick and Victoria Meade, June Burr, Peter and Joanne Samson, Alan and Anna Crane, Kevin and Tonalee Bombard, Craig Goss and Jeanne Elias, and Colin Kaminski.

5. Although the pond would hold less than the prescribed 100,000 cubic feet of water, the proposed berm exceeds the 10-foot requirement of Section 4.11. Per Section 4.11 (E) of the Fayston Land Use Regulations, the proposed residential pond requires conditional use approval due to the pond having a berm approximately 12 feet in height, as measured from the lowest elevation of the downstream toe to the crest.

6. Portions of the pond as proposed would exceed slopes 15% in grade.

7. The proposed pond would impound approximately 25,000 cubic feet of water.

8. Although there is a small stream in the vicinity approximately 75 feet from the closest edge of the pond, it is expected that the area is wet enough for groundwater seepage to fill the pond itself. There is a spring which could be tied into the pond should it be needed.

9. The pond would be 200-300 feet from any property line, thus situated well within the parcel bounds.

10. The width of the berm would extend an additional 22 feet out.

11. Excavated soils would be utilized for fill so long as the soils are adequate for such purpose.

12. The project proposes an overflow pipe that would drain to a splash pad and then disperse down the hill.

13. Pursuant to Section 4.11, any pond that impounds more than 100,000 cubic feet of water or includes a structural element greater than ten (10) feet high measured from the lowest elevation of the downstream toe to the crest shall be subject to conditional use review pursuant to Article 5. In granting approval, the DRB shall find that: 1) The proposed pond is designed and certified by a Vermont licensed professional engineer with experience in pond design; 2) The proposed pond poses no danger to neighboring properties, roads, bridges and culverts; and 3) The project has received a permit from the Vermont Department of Environmental Conservation in

accordance with 10 VSA Chapter 43 if the proposed pond will impound or be capable of impounding more than 500,000 cubic feet of water.

14. George McCain is a licensed Vermont engineer with experience in pond design.
15. Applicant stated that he would provide a letter confirming that the proposed pond poses no danger to neighboring properties, roads, bridges and culverts.
16. Applicant also agreed to provide a certification from an engineer that the pond was constructed according to the approved certified plans and specifications.
17. Board members had concern about the pond discharging into an open field without a proper conveyance way to the road. Shane is concerned that the path may be chewed out over time, leading to potential ditching problems along the road.
18. Applicant stated that, directly downhill of the pond, he could instead redirect the pipe to come down more towards the middle, and rather than a stone splash pad he could use a 30-foot level spreader to allay the Board's concerns.
19. Applicant affirmed that there should not be raging waters coming from the pond as there is no water source feeding it and that precipitation events shouldn't create too much of an issue, and there is an emergency spillway should some large event occur.
20. The site plans depict an electrical line coming down to the pond because applicants are contemplating a fountain which is not only aesthetic but aerates the water.
21. Per the site plans, lighting will be downcast and shielded, a maximum of 5 fixtures, 3 near the pond and 2 on the path to the pond.
22. There will be a 400-foot walking path along the electrical line down to the pond.
23. The walking path will be outside the required stream buffer.
24. Pursuant to Section 5.4 (A), the Board found the pond would have a potential impact on the capacity of existing or planned community facilities or services (Section 5.4 (A) (1)). Specifically, the Board believed there would be a possible impact on the road below in case of pond breach. However, given that the Board would condition approval of the application upon receipt of a statement from a licensed engineer that the pond was constructed according to the approved plans and specifications, this impact is mitigated.
25. The Board found the proposed pond would have no effect on the existing rural character of the area (Section 5.4 (A) (2)).
26. The Board found the proposed pond would have no effect on traffic on the roads in the vicinity (Section 5.4 (A) (3)).

27. The Board found that the proposed pond is otherwise in conformance with all other existing bylaws in effect, specifically Section 4.11 (E).

28. The Board found that the proposed addition could impact the sustainable use of renewable energy resources (Section 5.4 (A) (5)). However, although the pond would require power, aerating a pond would be a minimal use.

29. Pursuant to Table 5.1, the Board shall determine if the proposed pond would create an adverse effect upon the resource, issue and/or facility in question. The Board shall determine such by responding to the following question: Does the project have an unfavorable impact upon the resource, issue and/or facility in question?

30. Having found that the proposed pond may have an adverse impact on the capacity of existing or planned community facilities or services (Section 5.4 (A) (1)) in case of breach, members proceeded to the next parts of the test: (A) whether the project conflicted with a clear, written standard in the regulations or municipal plan applicable to the resource, issue or facility in question (Figure 5.1 (2) (A)); and (B) can the unfavorable impact be avoided through site or design modifications, on mitigation, or other conditions of approval (Figure 5.1 (2) (B))?

31. Members agreed that the answer to (2) (A) was “no” and the answer to (2) (B) was “yes.”

32. Accordingly, the Board found that the project meets the general review standards as outlined in Figure 5.1’s test on undue adverse effects.

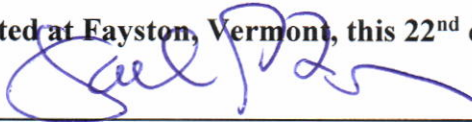
**Decision:**

DRB members present voted unanimously to approve applications #3476 and #3477 to construct a pond with the following conditions:

**Conditions:**

1. Design and implement a splash pad or above-mentioned 30-foot spreader;
2. The pond is certified by a Vermont licensed engineer with experience in pond design;
3. Provide a statement from licensed engineer certifying pond construction was done according to approved plans and specifications.

**Dated at Fayston, Vermont, this 22<sup>nd</sup> day of August, 2018.**



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**Chair Jon Shea, Development Review Board**

**NOTICE:** This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the [Development Review Board]. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.