

**FAYSTON DEVELOPMENT REVIEW BOARD  
MINUTES  
TUESDAY, OCTOBER 13, 2020**

**Unapproved**

Via ZOOM and Fayston Town Office

Attending DRB Members: Shane Mullen (Chair), Pete Ludlow, Mike Quenneville, Ky Koitzsch, Jared Alvord; ZA: JB Weir; Public: Gunner McCain, Abby Dreyer, David Hodgson, Karen Sauther, Carol Chamberlin, Fred Viens, Kaylie Viens, Rick Scarzello, Jill Ellis, Kyle Eillis

The meeting opened at 6:09 p.m.

Chair Mullen opened the hearing for applications #3599-#3600 (parcel ID# 01-026.000, located at 2142 North Fayston Road, Fayston. Applicant Abby Dreyer requests approval under Article 8 of the Fayston Land Use Regulations for a 6-unit Planned Residential Development (#3600). Applicant also requests approval under Article 7 of the Fayston Land Use Regulations for a major subdivision of one 114.33-acre lot into two lots of 108.33 acres and 6 acres (application #3599). Pursuant to Section 8, Planned Residential Development review is conducted simultaneously with major subdivision review.

Applicant's 114-acre parcel currently contains a one 3-bedroom residence and a 1-bedroom apartment above a barn. The proposed project includes the subdivision of one 6-acre lot from a 114-acre parcel as well as the development of a 6-unit housing project on that 6-acre parcel. The proposed Planned Residential Development includes 6 small-footprint residential structures with one-two bedrooms each. The proposed residences will share a community on-site septic system. The project purports to serve affordable housing needs.

Chair Mullen asked which members of the public present via Zoom wish to be deemed Interested Parties to this application. Chair Mullen noted the definition of an "Interested Party" is "a person owning or occupying property in the immediate neighborhood of a property that is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interests under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or regulations of the town." Chair Mullen added that this essentially means whether any members of the public have any concerns about potential physical or environmental impacts associated with the project. Only interested persons to this application can appeal the decision.

Chair Mullen asked whether Kyle and Jill Ellis wished to become interested parties to the applications. Kyle responded in the affirmative. Kyle and Jill live across the street from the applicant are concerned about the traffic that would be generated by the project. Mike moved to find Kyle and Jill Ellis interested parties to the applications. Pete seconded. There being no discussion, all in favor, the motion carried.

Chair Mullen asked whether Rick Scarzello wished to become interested parties to the applications. Rick responded in the affirmative. Rick is an adjoining property owner is curious as to whether the building lots are proposed, how many wells will be drilled, and where the

septic systems will be. There is a stream that runs along the property line and Rick's house is spring-fed. Rick is also concerned about the traffic generated from the development. Ky moved to find Rick Scarzello an interested party to this application. Mike seconded. There being no discussion, all in favor, the motion carried.

Chair Mullen asked Fred Viens if he wished to become an interested party to this application. Fred responded in the affirmative. Fred is an adjoining landowner whose rental house along with spring is directly downhill of the project. Fred is concerned over the amount and size of the lots, screening and traffic generated by the proposed development. Pete moved to find Fred Viens an interested party to this application. Ky seconded. There being no discussion, all in favor, the motion carried.

Chair Mullen asked JB whether the two Planning Commission members could become interested parties. JB answered in the negative absent meeting the criteria set forth in 24 V.S.A. Chapter 117 §4465 (b).

Shane asked members of the public intending to provide testimony or evidence at this hearing to affirm the oath to provide truthful testimony. All swore to do so.

Shane asked for clarification as to the type of subdivision given that on the application materials the ZA delineated it was a minor subdivision. JB stated that this was error that was clarified in the warning. All applications for PRDs entail major subdivision review no matter how many lots are subdivided off.

Chair Mullen stated that both the subdivision application and the PRD application contain different sets of requirements. Shane also noted that the site plan includes a proposed accessory storage barn. Shane believes that the barn would require conditional use review despite the applicant not applying for any conditional use. The Board agreed that it would be better to review the applications as proposed and leave the barn for a separate application at a future date. Gunner and Abby were amenable to that.

Carol inquired whether conditional use review was necessary due to the length of what would eventually constitute a road exceeding 500 feet. Gunner proffered that the road is already there as it serves as the driveway for the home and barn apartment. Shane stated that he had reviewed the LURs for this notion and could not find anything that demanded conditional use review for this road. The Board and JB agreed that conditional use review due to road length was not applicable. However, road design and specifications will be addressed pursuant to subdivision review.

Chair Mullen noted that the applicant requested a waiver from the Board to combine Sketch, Preliminary and Final for a major subdivision and to hear both the PRD and subdivision applications in one hearing. Shane turned to the subdivision application requirements set forth in Table 7.2 of the Fayston LURs. The application requirements delineated in the column headed "2<sup>nd</sup> Major Subdivision Hearing" need to be satisfied at the outset of this hearing in order for the applications to qualify for the waiver requested. Chair Mullen asked members of the Board whether they believed that the material received conforms to the subdivision application

requirements of Table 7.2 for final plat, and thus warranting a single hearing. The Board did not believe so. Chair Mullen asked members of the Board whether they believed that the material received conforms to the subdivision application requirements of Table 7.2 for the first major subdivision hearing. The Board did not believe so. Chair Mullen noted that the materials provided by the applicant were a good basis to begin a sketch plan type review for now. Pete asked whether the Board go through Table 7.2 to see what requirements have been satisfied by the initial submissions. Chair Mullen noted that if any of the materials required for a certain review phase were not in hand then that review phase could not take place this evening. The Board reviewed the requirements of Table 7.2 for a second major subdivision hearing against the materials provided. The Board found the application deficient for the following required elements for that final public hearing:

- Waiver requests. There were no specific waiver requests that would pertain to subdivision review, such as road dimensional standards. Chair Mullen noted that a specific list of requested waivers would be beneficial. Gunner responded that PRD review inherently encompasses these types of waivers. Chair Mullen noted that, per Section 8.2 (B), the Board must include in its decision approval of a PRD a clear indication of all approved modifications of development standards. Having a delineated list from the applicant of all requested waiver to the otherwise-required development standards would aid the Board in making its decision.
- Disclosures of existing permits and/or previous denials on parcel
- Notice of Decision reference number (not applicable as no decision reached)
- Materials: mylar. Gunner stated that no town, including Fayston, has ever required a mylar to be submitted before final approval at hearing. The Board agreed that this mylar requirement could be waived. Shane noted that he would like to see the “preliminary” stamp removed from the site plans submitted.
- Road construction schematics/details (i.e. cross-section, gravel, crowning) and road profiles.
- Proposed conservation buffer and/or easement areas. Discussion was had as to whether the applicant properly designated “open space” for the application. “Open space” is defined as “Land not occupied by structures, buildings, roads, rights-of-way, driveways, parking spaces, recreational facilities, and parking lots. Open space may or may not be held in common, individual yard areas, or lands so intensively used as to render them inconsistent with this definition, in the DRB’s judgment, are excluded.” At the very least, applicant needs to more clearly define the proposed “open space” for the PRD application.
- Existing and proposed traffic generation rates, volumes. Gunner noted that, per the Institute of Traffic Engineers manual, a residential subdivision triggers 10 one-way trips per day per unit (5 in and 5 out). Therefore, Gunner surmised the PRD would generate an additional 60 trips per day above the current 20 trips per day from the primary residence and accessory dwelling from Lot 1, totaling 80 per day.
- Proposed covenants and deed restrictions. Gunner stated that he has never been asked to provide these legal requirements at the outset of an application hearing. Chair Mullen noted that for a major subdivision and PRD as unique as this project in which

there are multiple units on one lot which are rented out under one ownership, there are a lot of questions which could arise, such as septic maintenance, plowing, and road repair which would necessitate the need for covenants. Chair Mullen believes this project is significant enough that the Board wants to see formal covenants and deed restrictions spelling out how this would operate. It is important to understand what would happen when the applicant sells the property or it otherwise changes hands. Gunner believes that this shouldn't be necessary as the applicant does not intend to sell anything. Therefore there would be no covenants or deeds written. There would be a lease agreement. The applicant is responsible for everything because she is renting the homes. Gunner would be amenable to a condition of approval that stated if the property is ever subdivided, sold, or made into condominiums then the Board would like to review and approve those documents. Shane noted that just because the use may change at some point does not mean that the DRB gets involved. Shane responded that he is concerned about the future and what would happen upon the sale of this development. Gunner offered to provide a sample lease that the applicant would use with renters of the homes. Karen noted there are concerns that these smaller homes could be rented out by a future owner as AirBnBs or the like rather than as affordable single family dwellings intended to serve as primary residences to help the current housing affordability crisis. Karen wondered whether the Board could write conditions in any approval that prevented the units from ever being used as short-term vacation rentals. Gunner responded that there was no authority to do that.

Carol offered a Planning Commission perspective. Carol stated that the project would be more straightforward if Abby were creating the lots and selling them. Carol added that this was what the PRDs were designed for. Rural PRDs have been set up to include smaller lot sizes because the developer is setting up a chunk of land for conservation. Carol stressed that this project as proposed is far different than anything the Planning Commission could have imagined when the PRD regulations were drafted. Gunner opined that this project does fit into Section 8 as written. Chair Mullen reiterated that the Board is bound by the LURs in reviewing a project which proposes 6 units on one single residential lot. Per Section 3.7 (B), "Only one single principal use or structure may be located on a single lot, unless ... otherwise approved by the DRB as part of a PUD or PRD under Article 8." Shane understands that to mean that, in the ordinary situation, the LURs mandate one principal dwelling. However, in Section 8.1 (B), it reads that "the DRB may modify applicable area and dimensional standards required elsewhere in these regulations simultaneously with the approval of a final subdivision plan and associated plat." Other than Section 3.7 (B) as noted above, Shane cannot find anywhere that the DRB can allow more than one unit per lot. Per Section 8.1 (B) for PRDs, the DRB can waive standards pertaining to lot size or setbacks, but does not reference the number of dwellings on a single lot. Gunner stated that if the Board preferred instead that the proposed units were situated upon singular building envelopes he would have to discuss that with Abby.

Shane then inquired whether the applicant thought about approaching this project as a mobile home park. Shane noted that the definition of a mobile home park under the LURs is "A parcel

of land under single or common ownership or control that contains, or is designed, laid out or adapted to accommodate three or more mobile homes.” Shane added that, per the LURs, a mobile home is a unit on wheels. Gunner responded that the application proposes at most three tiny homes on wheels, with the others being either a converted shed or built from wood. Abby clarified that of the proposed homes, one will be a rebuilt shed, two would be on a foundation, two on wheels, and the sixth is undetermined (probably on wheels). Shane noted that there is a requirement for mobile home parks that each mobile home lot needs to be at least 12,000 square feet in area and have some dimensional requirements. That being said, given that the project proposes a PRD, those requirements could be waived by the Board. Another requirement is that, for the entire parcel, buffer areas of at least 50 feet in width needs to be set around the entire length of the parcel. Shane would like the applicant to present a basic description of construction technique so the Board can better understand what types of structures are being proposed. Gunner asked whether designation as a mobile home park would be applicable if the proposed units were not all tiny homes on wheels, i.e. if there was a mix of units. Gunner proffered that the Board seems to be saying that the project cannot be approved as proposed absent applying for a mobile home park on the one 6-acre parcel. Gunner then asked whether approval comes down to the site plan showing footprints of small lots that could potentially be sold off separately. Carol opined that, given that the definition of “mobile home park” does not expressly preclude other types of residential structures, applicant’s proposed mix of structures would not preclude approval as such. Gunner disagreed, citing that the DRB does not have the authority to allow more than one principal dwelling per lot unless via a PRD or PUD.

Pete opined why this project review cannot merely proceed as the proposed PRD. Pete noted that the project may not be the ultimate concept of a PRD, but nonetheless checks off many of the criteria in Article 8 while addressing the affordable housing issue in the community. ZA Weir noted that he had reached out to two different people with experience in PRDs for guidance. Both responses indicated that the project as proposed was unusual but not unheard of. ZA Weir also noted that there was an approved PRD in Waitsfield in 2005 in which 8 lots were created: one common lot, one septic lot, and 6 residential lots each of which contained four principal residential structures. Shane stated that this discussion as to number of lots is less a matter of potential land use impacts but more to do with the legal structures that will surround them. Abby understood this to mean that the Board is less concerned about now and more about the future when she sells or otherwise is divested of ownership of the units. Abby wondered why this wasn’t something to be dealt with in the future as opposed to now. Shane responded that, depending on how the decision is structured, a subsequent purchaser could perhaps turn the units into AirBnBs or other short-term vacation rentals. Members posited that these issues could perhaps be addressed via deed restrictions, conditions of approval recorded in the land records, or perhaps in the applicant’s will.

Ky asked how the Board is going to navigate the limit of one principal residential structure per lot. ZA Weir reiterated Section 3.7 (B) which provides the DRB with the authority to allow for more than one principal structure on a single lot if pursuant to a PRD application. Based upon the express language of this section, members agreed. Shane asked members if they were comfortable with approving a PRD for a single lot with multiple units or do they feel there needs

to be one lot per unit. Ky was not sure. Pete noted that he did not see anything in the PRD section that precludes the Board from approving such a project. ZA Weir asked Abby if she was set on renting the units as opposed to selling. Abby said that was her plan. Shane asked whether the Board could build in a condition of approval that if the intent is ever to condominiumize one or more units then the owner must come back to the DRB for a conditional use hearing to review how that use would be structured.

Shane stated that it remains to be seen how this project would be structured. Shane believes the Board needs to discuss this and provide feedback to the applicant on how best to proceed. ZA Weir asked Abby whether she would be amenable to making this a bigger subdivision in which each unit had its own lot. Mike said he would be more comfortable with this approach. Pete noted that the PC has discussed land use and smaller home development and the importance it may have as a basis of equity for new homeowners. Abby suggested leases with options to buy.

Karen wanted the Board to keep in mind that there may be requests in the future for accessory structures to these tiny homes. This also speaks to succession planning and deed restrictions for things such as septic easements. Karen stated that one way to maintain affordability is to assist in property maintenance (i.e. plowing, septic repair). Karen is also concerned about the width of the existing driveway which would become a private road.

Shane added that the Fayston subdivision regulations refer to the Vermont Agency of Transportation (“VTrans”) Standards with regard to road width. This project proposes to add 6 residential dwellings to the existing single-family home and barn apartment, for a total of 8 units. Per Table 6.1 of the Fayston LURs, that equates to 80 total trips (in/out) per day. Per the table, that requires two lanes of travel with each lane 9-feet wide and no shoulder.

ZA Weir enabled screen-sharing so Gunner could present the plans via his computer. Gunner noted that the initial grade of the road is gentle over the first section. There is an existing pull-off area where a tiny home now sits. That would be the first pull-off and be an extra 8-foot wide. Gunner proposes to widen the curb cut to 20 feet. The existing driveway varies between 12 and 14 feet in width. Gunner proposes cutting brush on both sides of the road for purposes of site-distance. There would be another pull-off at the 4+50 station. From the 2+50 station to the end of the road the grade is about 12.5%. There would be a third pull-off near the lower entrance to the meadow. Gunner is proposing a 16-foot wide road in the area of the home development to allow for overflow parking and easier access. Gunner noted the common leachfield, as well as a replacement easement for Abby’s existing home which is required by state permitting whenever new development is added to an existing developed parcel. Gunner also noted the various parking for the units. All units would have two parking spaces with overflow on the side. Gunner noted the one drilled well which would serve as the water source for the entire project. Gunner showed the well house which would provide the pressure tank and distribution. Whether or not a storage tank is needed is not yet known.

Pete asked about the replacement leachfield for the existing structures and whether there was also a replacement area designated for a future replacement area for the small homes. Gunner

stated that this is not required because the proposed leachfield for the tiny homes is a mound-type system and as such does not require replacement areas.

Gunner contented that although Table 6.1 calls for an 18-foot wide road, he routinely designs narrow rural roads with pull-offs. Gunner proffered that the speed limit would be below 25 mph. He added that the narrower roads are easier on the environment, use less resources, look nicer and are more than adequate to serve the needs of the project.

Kyle Ellis had a couple questions. Kyle wanted to know the size of the septic. Gunner stated that the system is sized for 6 units. For State permitting, there is a regulatory structure related to septic systems that allows for an averaging effect whenever you put 5 or more units into a single system. The averaging effect basically allows for design to a certain number of gallons regardless of the number of bedrooms. Shane noted that this Board has no authority or jurisdiction to make any set decisions on drinking water or wastewater, as the State took that over in 2007. Accordingly, the DRB cannot look into the technical aspects of wastewater.

Kyle also had a question about the curb cut of North Fayston Road. Currently, there is no culvert going underneath the driveway, although there is a culvert going underneath road from Abby's property to the Ellis property. Kyle wanted to know if this would change. Gunner said it would not as the existing cross-culvert is directly upslope of the drive and that deals with the drainage at the driveway entrance. Gunner does not expect any measurable increase in flow at the access point as the plans do not call for much of an increase in impervious surface beyond some widening at a couple of pullouts. The impervious surfaces created farther up the road will not drain to that culvert but will shed down the hill.

Jill Ellis wanted to know whether, should the application be approved, the applicant would be able to add additional units at a future date without DRB review. Members responded in the negative, any future additions to the PRD would need Board review.

Rick Scarzello wanted to know why the project proposes homes on wheels when all utilities would run underground. Gunner responded that this is what the project proposes.

Jill Ellis asked whether there was a limit to the number of occupants who could reside in the smaller homes. Shane noted that as far as the LURs are concerned there is no way for the Board to limit the number of occupants. Abby stated that she does not intend to have more than two occupants per dwelling.

Ky asked about emergency access and whether the fire department has offered review. Gunner stated that they have not received feedback yet from the fire department but will assuredly get it.

Shane noted that the road design standards call for a right-of-way of at least 50-feet in width to be associated with the road. Given the discussion prior as to the required widths for the traveled lanes, Shane asked whether Gunner is proposing a right-of-way. Gunner stated in the affirmative, noting that it should have been on the plans but was erroneously not depicted. The right-of-way will extend from North Fayston Road all the way up to and beyond the project. The right-of-way will be added to the site plans. Shane asked whether the applicant is proposing a formal waiver to the road width criteria. Gunner stated in the affirmative.

Shane stated that, per Section 6.4 (B) (5), “Permanent dead end roads and cul-de sacs shall be discouraged unless deemed necessary by the DRB due to physical site limitations or safety considerations. No dead end road shall be permitted without a suitable turn around at its terminus. "T" or "Y" configurations suitable to topography are preferred, but a cul-de-sac with a radius of not less than 30 or more than 40 feet may also be considered as appropriate.” Shane noted that the initial submission had a loop road serving the project that would allow for traffic circulation but the new plans do not have any turnaround. Gunner responded that he was considering the intersection of the existing driveway and the new proposed road section to be an adequate turnaround for emergency vehicles. The new proposed road section is not long enough such that it would be too difficult for an emergency vehicle to turn around.

Shane noted that the proposed electrical lines are not delineated on the plans. Per Section 6.8 (A) (3) of the LURs, existing and proposed utilities shall be shown shared with other utilities or roads. Gunner has stated that historically he has not included this on his plans, as much of that is up to the power company. There is an existing transformer at the lower edge of the meadow. Gunner stated the power will be underground. Other than that, there will be another pedestal somewhere. Pete asked whether secondary power could serve the tiny home development. Gunner added that there will have to be some primary power not just secondary.

Shane noted Section 6.8 (A) (3), which reads “Utility corridors shall be shared with other utility and/or transportation corridors, and be located to minimize site disturbance, the fragmentation of farmland and other designated open space, and any adverse impacts to natural, cultural or scenic resources and public health.” Shane also pointed to Section 6.8 (A) (2), which reads “The applicant shall coordinate subdivision design with the utility companies to insure adequate and suitable areas for installation, both for the proposed subdivision and anticipated development on lands adjacent to the subdivision.” Gunner responded that this should not be relevant in the context of the project as presented. Shane responded that the regulations ask for this information. Abby stated that she did have someone there from Washington Electric and, after a preliminary understanding of the development, had no issue with it.

Gunner asked Shane whether, going forward with every subdivision, the applicant needs to go to the power company and get the engineered design from them prior to having any local approval. Shane said that this particular application is being discussed tonight. Gunner proffered that if the regulations call for that, than why that wouldn't be the procedure for any subdivision going forward. Shane prefers to stick with the current application for this discussion.

The Board and ZA Weir will prepare a list of what they want to see from Gunner at the next hearing on this application.

Shane noted that the proposed barn would need a conditional use application at some point should the applicant wish to proceed with that structure.

Carol mentioned the requirement for a provision for permanent retention of open space of some size acreage. Shane noted that we have yet to really address the PRD standards. Per Section 8.5 (A), “In any PRD or PUD, approval of such development shall carry with it provision, whether by deed restrictions, restrictive covenant, or other appropriate legal means, to ensure the

permanent retention in open space of the undeveloped portions of the development parcel.” Shane said this means the open space needs to be clearly delineated on the plan, including location, dimension and acreage. There are no minimums as to open space size, but it does need to be clearly stated and marked.

Shane noted Section 8.5 (B), which reads: “In PRDs and PUDs that include affordable housing, approval of such development shall carry with it management and legal requirements to ensure the long-term affordability of such units, which at minimum shall be for 15 years from the date of construction.” Gunner believes that regulations should not apply because the project is not “affordable housing” insofar as receiving state or federal aid for development of the project. Abby clarified her desire is to have these as affordable housing units.

Shane stated that the best option is to continue the hearing and allow for the applicant to provide various items for the Board as will be requested via an itemized letter. ZA Weir again asked if the Board as a whole is comfortable with proceeding on the application as the project is presented, or whether the Board prefers to see each home on its own lot. Pete believes it fits as is under Section 8, especially after the applicant provides the additional materials requested. Ky believes we should be mindful that we are setting a precedent for future projects and great thought and detail needs to be put in place for that reason.

Mike moved to continue the hearing until November 10, 2020 at 6:00 p.m. Ky seconded. There being no discussion, all in favor, the motion carried.

The meeting adjourned at 8:38 p.m.