

Minutes
FAYSTON DEVELOPMENT REVIEW BOARD
TUESDAY JULY 6, 2021

6:00 p.m. – In-person at 866 North Fayston Road in Fayston Municipal Offices and via Zoom:

Attendees

Development Review Board: Shane Mullen, Jared Alvord, Pete Ludlow, Ky Koitzsch,

Zoning Administrator: JB Weir

Visitors: Peter Kuhlmann, Shirley Kuhlmann, Gunner McCain, Akhil Kaplan, Gary Brosnahan, Karen Smith, George McCain, Jesse Murphy, Michael Sullivan, Jon Kirson, Dan

Call to order at 6:02pm

Applicant: Gary Brosnahan

Application Number(s): 3661

Type of Hearing: Requesting a variance under Section 9.6 (A) of the Fayston Land Use Regulations for an existing tiny home structure that encroaches upon the 50-foot stream buffer requirement set forth in Section 3.13 (A) of the Fayston Land Use Regulations.

Parcel ID: 11-089.000

Location of Property: 236 Fayston Hollow, Fayston

1) Summary of project history (George).

- a. Approval in 2013 for a structure in the stream setback under the 2012 regulations. There was a setback waiver for 5' reduction of the setback on uphill side and 15' reduction on the downhill side. Since then Gary has built a tiny home. The closest corner of the structure is 46' from the high-water mark. Requesting a waiver for the structure as built and maintain the waiver for additional structures as the stream goes through the middle of the property.
- b. Shane: What is the current encroachment? George: There is no uphill encroachment and downhill about 3'. Shane: can the tiny house be moved? George: it's on a permanent foundation and power tie in.
- c. Ky: There appears to be some room behind the house to move it back. George: It would be difficult to situate that with the set back from the top of bank.
- d. JB: Just to note there is an error in the packet as there was a shed approval extension (change of use permit) with a 75' setback from the top of bank stream in 2018 in application 3503.
- e. Shane: so a couple things that we're up against is that the last item we had showed the structure being 75' from the stream and ended up being less than the 50' from the stream. Gary: My recollection was that we requested the 50' setback. (JB shows form). At that point the structure was built. JB: the original shed request was 50' and then the second request states 75'.
- f. Shane: One of the items in the request is unnecessary hardship to the appellant. George: Our thought process was that it would be allowable when the structure was built. Guy: My original intent when I built it was to live in it. The 75' came in with the change in use and didn't know I needed to fill out the form in 2013. JB: The original request was 55' and was listed as shed.
- g. Mike: It sounds like you built a shed not where you were going to build it and now you're asking us to approve it. Gary: I try to follow the rules and I didn't fully understand the rules at the time. Shane: Did you have it staked out when you bought it? Gary: Yes I paid a local contractor to measure it out.
- h. Ky: is the septic part of this application? JB: no the septic isn't part of the structure. Ky: What is the foundation? Gary: it's piers.
- i. Shane: We just went through a variance process for a proposed land development. Typically

- variances are for proposed building, not something that's already there.
- j. Ky: In terms of the structure in order to pass a variance, you need to meet certain conditions due to property peculiarities. Even if this could be viewed as a variance, that building could be moved. Guy: The last time I was here there was concern with the proximity to Ms. Smith's property and the vegetative screens. Shane: But there is appears to be enough space to move the structure back and maintain the side yard requirement. George: The steep slope starts about 30' back beyond the property line.
 - k. Ky: What is the history or precedent for a waiver on an existing structure? JB: There isn't really one. We've done it on a driveway with some work elsewhere but there is no precedent.
 - l. Shane: What rules and regulations is the applicant is working under? JB: He's all clear from the 2018 change of use permit. The sheds were 2013 when the 2012 regulations were in effect, but that may be a stretch for the current situation. Shane: If we deny the variance and work is done to bring the structure into conformance, that just takes care of what was done, not for future issues. JB: If the applicant brings the structures into conformance from the 2013 application, I think we can provide some leeway. If you modify the structure to reflect what was approved in 2013, then amended the 2018 application, everything would be clear.
 - m. Karen: When you are discussing moving the structure, would it move it closer to my property line? Shane: Yes. Karen: With that would there be more sheltering of his structure to mine? Shane: With the screening, I believe it was to prevent headlights shining onto Karen's property. Guy: Yes I installed some ornamental trees. Shane: Karen, have you seen headlights coming from his property to yours? Karen: In the summer, it's completely green and provides screening. My concern is in the winter where there's no leaves.
 - n. Ky: does it detail in the prior application what the conditions were around the screening? Gary: I did buy 6 shrubs and they just aren't growing that fast because of the shade. JB: It's in page 20 of the packet.
 - o. JB: Michael are you on the phone? He's also an abutter. Michael: Yes. I can't see the house from where I am. I'm a little further down the road.
 - p. Ky: is the screening referencing a larger proposed house or the shed? JB: It is for a larger proposed house.
 - q. JB: The tiny home can be modified to meet the 2012 regulations? George: if Gary is amenable, yes. Gary: I can make some changes to keep the square footage, then sure. Shane: As things progress, I think you should keep the ZA involved so there's work done in compliance.
 - r. JB: My recommendation is to withdraw the variance and have the applicant amend the prior permits. George: I recommend to Gary that he withdraws the variance application. Gary: I withdraw the variance application.

Applicant: Peter & Shirley Kuhlmann

Application Number(s): 3662

Type of Hearing: Requesting conditional use approval under Section 3.4 (C) (1) (d) and 3.4 (E) of the Fayston Land Use Regulations for development of a driveway, single-family home and accessory structures on slopes in excess of 15% in grade.

Parcel ID: 03-086.010

Location of Property: 3682 Center Fayston Road, Fayston

- 1) Motion to find the application complete by Ky, seconded by Pete. All in favor, none opposed. Motion passes.
- 2) Presentation by applicant.
 - a. Gunner: This is another driveway on slopes for about 900' of driveway to get to the house site. We will accept the condition to follow the erosion risk handbook as we will be disturbing about an acre.
 - b. Shane: I notice the barn is on its own. Is there intent to have water or sewer service to that structure? Gunner: No there is not.

- c. Shane: I notice the building envelope as drawn, is the intent of the building envelope to show structures or grading? Gunner: The building envelope shows what is planned for today and any future sheds or additions. Shane: The one corner seems to encroach on >25% slopes. Will there be any earth disturbance below that? Gunner: We'll have a silt fence below that to prevent but there shouldn't be any disturbance.
 - d. Shane: Going back to the general regulations is section 3.4.e (quoting regulation). My initial thought is that this building envelope should not be on slopes in excess of 25%. Gunner: but the regs state that we can disturb slopes for development. Shane: Can the house structure be edged in to give some space on the eastern boundary? Gunner: the architect is not on the call, so I'm hesitant to move the house around without her feedback. Paul: We're still very much in the design phase and don't have build plans yet; the intent is to not build on >25%.
 - e. JB: How long is the driveway? Gunner: As shown about 940'.
 - f. Ky: Above the house site there is some steep terrain with some water runoff. Looks like you have a culvert up above and one under the driveway. Do you see a lot of water coming off that slope? Gunner: We plan to put a diversion swale around the house to shed that water. We don't expect a huge volume of water coming off this house? Shane: Will that swale be permanent? Gunner: yes.
 - g. Shane: I noticed these plans say "preliminary plans." Gunner: we can send you a set tomorrow that state for town permitting.
 - h. Ky: What is your proposed start date for building? Paul: It's dependent upon the permitting and we must go through act 250 on this site. We'd like to start as soon as possible, but likely September at the earliest.
 - i. No questions from abutter Jesse Murphy.
- 3) Motion the close the hearing by Pete, seconded by Mike. All in favor, none opposed. Motion passes.

Applicant: Akhil Kaplan & Megan McDonough

Application Number(s): 3663-3664

Type of Hearing: Requesting approval for a subdivision amendment to application #1651, issued 11/10/1998. Applicants request to adjust the location of the approved building envelope (#3663). Pursuant to Article 7 (Section 7.7) of the Fayston Land Use Regulations, any revision to an approved plat requires Development Review Board approval. Applicants also seek conditional use approval under Section 3.4 (C) (1) (d) and 3.4 (E) of the Fayston Land Use Regulations for development of a septic system on slopes in excess of 15% in grade (#3664).

Parcel ID: 07-024.002

Location of Property: 365 Mikhal Drive, Fayston

- 1) Complete packet received and abutters notified.
- 2) Motion to find application complete by Mike, seconded by Pete. All in favor, none opposed. Application complete.
- 3) Presentation by property owners.
 - a. Discussion was had with abutting property owners to move building envelope to provide better sunlight and less visibility from neighbor's house.
- 4) Questions from board:
 - a. Further detail provided around driveway grading, house envelope, and septic uphill on >15% slope to disposal field. Erosion control measures detailed. Shane: Would you be open to further conditions on erosion control? Gunner: No problem.
 - b. Akhil: Please note we're only looking to move the building envelope, not change the size. This move of the envelope will put us further from the abutters.
 - c. Ky to recuse from a vote.
 - d. Mike: What's with the septic? Is it a new design? JB: Just need the conditional use due to the steep slopes.
- 5) Motion to close the hearing for this application by Pete, seconded by Mike. All in favor, none opposed. Hearing is closed.

Applicant: Jon & Heather Kirson

Application Number(s): N/A

Type of Hearing: Requesting preliminary sketch plan review for a lot-line adjustment of 5.03 acres.

Parcel ID: 08-056.000

Location of Property: 256 Henry's Way, Fayston

- 1) Jon: Since the last time we were here, we have decided to shift 5 acres to Emily and Scott Johnson (abutters). There isn't any intent to develop the 5 acres. What we would like to do is a lot line adjustment but are reviewed as a minor subdivision.
- 2) Questions from DRB:
 - a. Shane: I see the first survey does include right of way for a driveway extension. Will this lot be developed or just give the Johnsons more property? Jon: They have no plans yet. There is no agenda other than the first step of buying the land.
 - b. Jon: Which is better, a lot line adjustment or subdivision? JB: A lot line adjustment would not require a building envelope or waste water plans.
 - c. Shane: It sounds like it's a lot line adjustment between those two parcels and there is no proving out if that land is buildable or not, then the new owners would have to determine if they want to build on that land and do the work later. Jon: Does it need to be a separate lot to build an accessory dwelling? JB: It depends on the lot size and dwelling size for up to 900 sq feet or up to 40% of the existing dwelling.
 - d. JB: Anything additional the board needs to see? Shane: So you're recommending a lot line adjustment? Jon: So you need to see a revised plan showing the remnant of mine with the 5 transferred to the Johnsons? Shane: Show all three lots after the fact. JB: Yes we'd need to see the whole of the Johnsons' lot after the adjustment is done.
 - e. Shane: We'll likely ask the questions about intent, building plans, etc.
 - f. Jon: When I look at table 7.2, it looks like there are several items that are not applicable, how do I address those? Shane: Which one in particular? Jon: Waste water plans, slopes/gradients? JB: I think he can submit that in writing and request waivers. Shane: For the traffic impact analysis, we're not talking about a significant increase as there's minimal impact. It really boils down to what the intention is: Is it truly a land swap, or subdivision request with development. Jon: At this point there is no real intent. We're just looking to do the lot line adjustment. Where there is something involving engineering or development, I'll just N/A on the form. Shane: That works and the development work will have to be approved later. JB: For the public hearing, we just need to have this showing the addition to the Johnsons' lot. You will need to notify abutting land owners via certified mail.