

**Development Review Board, Town of Fayston, VT
Notice of Decision for Application No. 3676**

Applicant & Landowner: Richard E. Lesage Revocable Trust c/o Virginia Lesage

Parcel ID: #01-059.000

Reason for Application: Development on steep slopes, request for setback waivers

Application Number(s): 3676

Type of Hearing: Requesting approval to convert a seasonal camp to a year-round residence under Section 3.6(D)(1) of the Fayston Land Use Regulations for a front setback waiver to 45', and a side setback waiver; requesting approval under Section 3.4(E) development on steep slopes in excess of 15% grade; and requesting approval under Section 3.13(C) for location of a building envelope within 100' of a stream.

Public Hearing Attendees: 10/5/2021 – Attending DRB Members: Shane Mullen (Chair), Pete Ludlow, Mike Quenneville, Ky Koitzsch, Dan Young, Hanna Neill (ZA), Minute-Taker: Betsy Carter, Public: Jon Kirson, George McCain, Margo Wade, Abby Dreyer, Ginny Lesage, Joel Rhodes, Ray Munn, John Hammond, Kim Laidlaw, Dave Frank

Introduction and Procedural History:

1. The Development Review Board application was filed on August 30, 2021. Applicant requests approval to convert a seasonal camp to a year-round residence under Section 3.6(D)(1) of the Fayston Land Use Regulations for a front setback waiver to 45', approval under Section 3.4(E) development on steep slopes in excess of 15% grade and approval under Section 3.13(C) for location of a building envelope within 100' of a stream. 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 September 16, 2021 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 October 5, 2021. 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. Conditional Use application #3676

Exhibit B. Project narrative provided by McCain Consulting, including responses to the Conditional Use Review Standards (Section 5.4).

Exhibit C. Letters to adjoining landowners with project description and list of abutting landowners.

Exhibit D. Warning placed in the Valley Reporter on September 16, 2021. This warning was also posted at the Fayston municipal offices, as well as at both the Moretown and Waitsfield post offices.

Exhibit E. “Slope Plan- Lesage Revocable Trust: Camp Conversion to Year Round Residence” dated June 12, 2021. (DC-3)

Exhibit F. “Details- Lesage Revocable Trust: Camp Conversion to Year Round Residence” dated June 12, 2021. (DC-2)

Exhibit G. “Site Plan- Lesage Revocable Trust: Camp Conversion to Year Round Residence” dated June 12, 2021. (DC-1)

Exhibit H. Proof of notice via certified mail receipts of abutting landowners.

Findings:

1. The Board found the application to be complete at a public hearing held on October 5, 2021.
2. 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 Section 2, Table 2.4 of the Town of Fayston, VT Land Use Regulations.
3. The applicant’s parcel is adjacent to land owned by Thomas & Joyce Rogan, Trustees, Eric & Chris Ann Bauer, Raymond Julien, Dale Manning & Kristen Maxfield, Chad Stanclift, and Leigh Williams.
4. The applicant’s 0.5-acre parcel currently consists of a seasonal camp with no onsite potable water and a wastewater disposal system of unknown type and location.
5. The applicant’s parcel’s eastern property line is a stream, and another stream is present on the southwesterly corner of the parcel.
6. The applicant’s proposed structure would be a two-bedroom residence with garage, new potable water supply well, wastewater disposal system and improved driveway to support a year-round residence.
7. Section 3.4(C) states that the purpose of the Land Use Regulations’ Sediment and Erosion Control Standards are to ensure “that existing site features that naturally aid in stormwater management are protected to the maximum extent practicable.” The forested land cover on the parcel proposed for development constitute those features that naturally aid in stormwater

management. This project will result in the removal and/or disturbance of the trees in an area of approximately 2,500 square feet that aid in stormwater management. This includes approximately 835 square feet of tree-covered land within the 50-foot buffer for both streams on the property.

8. The applicant has requested an approximate 835 square-foot waiver of the 50-foot stream setback buffer to construct the project.

9. Section 3.4(C)(2) states “Development shall not result in an undue adverse impact on fragile environments, including wetlands, wildlife habitats, streams, lakes, steep slopes, floodplains and vegetated riparian buffers.”

10. Section 3.4(C)(2)(b) states, “Forested lands located on stream and wetland buffers and steep slopes are priority areas and are subject to regulation in Section 3.13.”

11. Section 3.4(C)(2)(c) states, “Environmentally sensitive areas, such as steep slopes shall be a priority for preservation and open space.”

12. Based on the foregoing, the DRB determines that the project, due to the size and extent of the stream setback waivers requested, would create an undue adverse impact on the streams under Section 3.4(C)(2). The proposed development has an unfavorable impact on that resource as structures are located within the 50-foot buffer of both proximate streams and will require permanent removal of the existing forested lands within the buffer.

13. Pursuant to Section 3.4(E)(1)(a)&(b), applicability of development on steep and very steep slopes is described as: “(a) Steep Slopes (15 + %) Development involving the site disturbance, excavation, filling, or regrading of 1000 or more square feet of land with a gradient of 15% or more...(b) Very Steep Slopes (25 + %) No site disturbance of development shall take place on very steep slopes with natural gradients of 25% or more, with the exception of...(i) limited site improvements necessary to facilitate development on contiguous land with a slope of less than 25% gradient.”

14. The development area is located on slopes up to and exceeding 25% in grade per the surveyed topography on the site plan submitted by the applicant. The wastewater disposal system is located on steep (15% - 25%) and very steep (>25%) slopes. The potable water supply is located on steep slopes. The limits of earth disturbance include an uphill diversion swale on slopes of approximately 70%. The driveway is located on steep slopes. No grading plan indicating proposed topographic conditions was provided.

15. Approximately 5,000 square feet of land will be disturbed as part of this project. This includes approximately 3,400 square feet of impact to steep (15% - 25%) and very steep (> 25%) slopes out of a total amount of earth disturbance of 5,000 square feet, which amounts to approximately 67% of the project area. In addition, the proposed access for a drilling rig to the potable water well is 10 feet wide, and it impacts and crosses steep (15%-25%) slopes.

16. Based on the locations of the building envelope, driveway and septic system as shown in the application materials, the DRB finds that this project will not be sited to avoid areas of steep and

very steep slope in order to minimize the need for sit clearing, grading, cut and fill pursuant to Section 3.4(E)(3)(a). No proposed grading plan was furnished with the application materials, and the potential additional impacts to steep and very steep slopes was not able to be determined. However, these impacts will be in addition to those described above and would not mitigate those impacts.

17. The DRB concludes that this project will not “protect areas of steep slope within the Town of Fayston from the adverse effects of site disturbance and development” as Section 3.4(E) describes. Further, the DRB does not believe that the access proposed to the well site is sufficient to encompass all required work.

18. The existing parcel size (0.5 acres) is less than the minimum lot size stated in Table 2.4(D) of the Fayston Land Use Regulations. As per Section 3.5(A) of the Land Use Regulations, this existing small lot may be developed for the purposes allowed in the district in which it is located. Also, existing small lots shall be subject to all other applicable requirements of these regulations, including dimensional and setback standards set forth in Article 2.

19. Due to the unique geometry of this parcel, including an eastern property line that is defined by the centerline of a stream, this lot is unable to be developed unless multiple setback waivers are granted by the DRB. As the project proposes multiple waivers from setbacks and other dimensional requirements, it does not comply with the regulations in Section 3.5(A).

20. Due to the constraints of the property, the applicant requests a waiver of the front yard setback in accordance with Section 3.6(D). This waiver is required to allow the proposed building envelope to be located more than 50 feet from the top of streambank on the eastern side of the property. Failure to grant the waiver would result in the house being located within the 50-foot streambank buffer defined in Section 3.13. The DRB may allow for the reduction of the front setback from 65 feet to not less than 45 feet. Section 3.6(D)(3) states, “This section does not apply to setbacks from surface waters set forth in Section 3.13.” So a waiver from the 50-foot wide stream buffer is not available.

21. Due to the unique geometry of this parcel, including a maximum lot depth of approximately 176 feet, the building envelope cannot be located outside of the 100-foot stream buffer strip as defined in Section 3.13(C). Without the front setback waiver, the project would be located within the 50-foot stream buffer. The DRB expressed concerns over the short length of the driveway, asking if a vehicle could safely turn around in the lot and safely enter and exist onto the road. The applicant was not able to provide a conclusive response at the design of the building and garage has not been finalized inside the building envelope. This short driveway length is a result of a reduced front setback distance.

22. The applicant requests a waiver of the side yard setback of 25 feet to provide for the construction of the wastewater disposal system.

23. A portion of the proposed wastewater disposal system is located within the 50-foot stream buffer. The proposed water supply well and piping are located within the 50-foot stream buffer.

24. Section 3.13(C) states, “Any development within 100’ from the banks of streams and rivers, and the shores of ponds, must go through Conditional Use Review. The width shall be measured from the top of the stream bank or stream slope. The DRB may approve such development after a determination that the proposed modification meets the following standards:

“1) Reasonable measures are undertaken to protect water quality, such as, but not limited to, the planting of shade trees adjacent to stream banks, the protection of existing or establishment of new vegetated buffer areas along stream banks, and/or stormwater management provisions to collect and disperse stormwater away from the stream or river;”

“2) The development will not result in degradation of adjacent surface waters. Specifically the Board shall find the proposed development will not adversely affect: the ability of the stream to carry floodwaters, stream channel stability, the water quality of the stream due to potential erosion and runoff or, the natural beauty of the stream.”

25. The proposed building envelope is 50’ from the top of the stream bank. Due to the lot’s geometry a house cannot be located more than 100 feet from the top of stream bank.

26. Adjoiner Williams stated that the stream channel has migrated over time.

27. The applicant has proposed measures to preserve water quality. However he has not addressed the ability of the stream to carry floodwaters, the stream channel stability, or preserving the natural beauty of the stream.

28. The DRB expressed concerns over the stream channel stability. The location and direction of the streams on the property proposes a risk to abutting landowners, as increased erosion from this property would migrate to and harm them.

29. Section 5.4(A), General Review Standards, states that “conditional use approval shall be granted by the DRB upon finding that the proposed development shall not result in an undue adverse effect” on items including Bylaws in effect, siting and dimensional standards, access & circulation standards and stormwater management & erosion control standards. This evaluation is conducted using Figure 5.1, a test used by the DRB whether or not an undue adverse effect is being created.

1. Does the project have an unfavorable impact upon the resource, issue and/or facility in question?

3.4(C)(2) Preserve Natural Areas: Yes. The proposed limit of earth disturbance for this project is approximately 5,000 square feet. The DRB does not believe that it would be reasonable to expect zero disturbance to the areas beyond the limits of disturbance given the small size of the parcel and land proposed for development, and that would have an unfavorable impact upon forested land located in the 50-foot stream buffer. The buffer area is currently forested, and the proposed development would remove trees within the 50-foot buffer on steep slopes. The DRB concludes that this project conforms to this standard and has an adverse impact on Natural Areas, including the forested stream buffer.

3.4(E)(3) Steep Slopes: *Yes, more than half of the earth disturbance envelope is on land with a grade higher than 15%, with areas on land with a grade over 25%. The unfavorable impact is the disturbance in these sensitive areas.*

3.6(D)(1) Front Setback Waiver: *Yes, a front setback waiver means that the building envelope is allowed closer to the road, reducing the available length for a driveway and vehicle navigation. Even by issuing this waiver, it does not alleviate the disturbance envelope from the 100' stream buffer. Granting of this waiver does nothing to prevent the need for other waivers.*

3.13(C) Development Outside the Buffer Strip: *Yes, due to the geometry of the parcel, development inside of the 100' buffer zone cannot be avoided.*

2. If it has been determined by the DRB that an adverse effect is being created by a project, the DRB shall then determine if the adverse effect is undue. To determine whether or not an adverse effect is undue, the DRB shall respond to the following two questions:

a) Does the project conflict with a clear, written standard in these Regulations or the Municipal Plan applicable to the resource, issue or facility in question?

3.4(C)(2) Preserve Natural Areas: *Yes. The project would include development within **50 feet of two streams**, which is prohibited and which is a natural resource that has been identified as a priority for preservation. One of these streams (the one forming the eastern property line) has migrated in the past.*

3.4(E)(3) Steep Slopes: *Yes, this proposed disturbance envelope includes a large percentage of the disturbed area over 15% slopes as well as disturbances to slopes over 25%. These conditions are unfavorable without any mitigating steps (such as increasing setback distances to streambanks) to the impact suggested.*

3.6(D)(1) Front Setback Waiver: *Yes, Section 3.5 asks for all other dimensional and setback requirements to be met. Not only can they not be met through setback waiver, all that granting this waiver would accomplish is to grant a slightly smaller waiver for the 50-foot stream buffer that is still necessary.*

3.13(C) Development Outside the Buffer Strip: *Yes, the regulations are clear to maintain a 100-foot buffer from the banks of streams. This waiver is necessary to build on this lot and so conflicts directly with this section.*

b) Can the unfavorable impact be avoided through site or design modifications, on mitigation, or other conditions of approval?

3.4(C)(2) Preserve Natural Areas: *No, as the applicant's consultant has stated that the proposed project represents the best solution for the development of the lot, which includes impacts to areas within 100 feet of **two stream buffers**.*

3.4(E)(3) Steep Slopes: *No, steep slopes cannot be avoided as the development site cannot be modified to reasonably be developed on less steep slopes. No more moderate slopes are available.*

3.6(D)(1) Front Setback Waiver: *No, maintaining a 65-foot front setback would result in a building envelope being located within a 50 foot stream buffer.*

3.13(C) Development Outside the Buffer Strip: *No, due to the location of the streams and size and dimensions of this parcel, there is not sufficient space to locate a building envelope completely outside the 100-foot buffer strip.*

The DRB shall conclude that adverse effect is “undue” if the answer to 2(a) is YES OR the answer to 2(b) is NO

30. The DRB concludes that for all four areas of concern, not only is there an adverse impact, but it is also undue. Based on the testimony of the applicant’s consultant and a review of the application materials, there are no conditions of approval that can be imposed and no generally available mitigating steps that can be taken to avoid undue adverse effects on the forested steep slopes, streams and the 50-foot stream buffer and associated 100-foot stream buffer, or front setback.

Decision:

DRB members voted as follows to **approve** Conditional Use application #3676:

Shane Mullen: yes/**NO**/abstain/absent/recusal

Ky Koitzsch: yes/**NO**/abstain/absent/recusal

Michael Quenneville: yes/**NO**/abstain/absent/recusal

Peter Ludlow: yes/**NO**/abstain/absent/recusal

Daniel Young: yes/**NO**/abstain/absent/recusal

Dated at Fayston, Vermont, this 16th day of November, 2021.



Shane Mullen, Development Review Board Chair

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.

