

**Development Review Board, Town of Fayston, VT
Notice of Decision for Application No. 3599 - 3600**

Applicant(s): Abby Dreyer

Parcel ID: #01-026.000

Reason for Application: Planned Residential Development

Public Hearing Attendees: 10/13/2020 - 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

Public Hearing Attendees: 2/2/2021 - Attending DRB Members: Shane Mullen (Chair), Pete Ludlow, Mike Quenneville, Ky Koitzsch, Jared Alvord; ZA: JB Weir; Public: Gunner McCain, Abby Dreyer, Karen Sauther, Alan Thorndike

Public Hearing Attendees: 3/9/2021 – Attending DRB Members: Shane Mullen (Chair), Pete Ludlow, Mike Quenneville, Ky Koitzsch, Jared Alvord, Lindsay Browning; ZA: JB Weir; Minute-Taker: Betsy Carter; Public: Gunner McCain, Eve Silverman, Gene Scaperotta, Alan Thorndike, George McCain, Bob & Diane Schellack, Bruce Sinnott, Bob Lockett, Brian Holtan, Annika Holtan, Joseph Lojko, Andy Phelan, Kim Phelan

Introduction and Procedural History:

1. The Development Review Board applications were filed on August 20, 2020. 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. Conditional use review was also necessary on account of disturbance of steep slopes. Although conditional use review was not formally requested as part of the applications, the Board proceeded to include such review per its standard practice. 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 August 27, 2020 the legal warning for a public hearing for review of these applications 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. A site visit to the subject property was held on September 29, 2021.

5. The applications and plans were considered by the Development Review Board at public hearings which occurred on October 13, 2020, February 2, 2021 and March 9, 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. Subdivision application #3599

Exhibit B. Planned Residential Development application #3600

Exhibit C. Letter to adjoining landowners with project description and list of adjoiners

Exhibit D. Warning placed in the Valley Reporter on August 27, 2020. The warning was also placed in the Times-Argus on August 21, 2020. This warning was also posted at the Fayston municipal offices, as well as at both the Moretown and Waitsfield post offices.

Exhibit E. Project narrative addressing compliance with Fayston Land Use Regulations titled “Abby Dreyer two-lot subdivision and Planned Residential Development, 2142 North Fayston Road, Fayston” dated August 18, 2020

Exhibit F. ANR atlas map titled “Dreyer Resource Map North Fayston Road” (dated August 18, 2020)

Exhibit G. ANR atlas map titled “Dreyer Habitat Map North Fayston Road” (dated August 18, 2020)

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

Exhibit I. Management and Operations Agreement for Abby Road Village

Exhibit J. Memorandum from Gunner McCain in response to DRB request for additional or updated materials (dated January 22, 2021)

Exhibit K. Revised “Site Plan Town – Abby Road Village – Residential PRD – McCain Consulting – Sheet C-1 (dated August 18, 2020, revised February 23, 2021)

Exhibit L. Revised “Site Plan Town – Abby Road Village – Residential PRD – McCain Consulting – Sheet C-1 (dated August 18, 2020, revised March 2, 2021)

Exhibit M. “Site Plan - Abby Road Village - Residential PRD - McCain Consulting - Sheet C-2 (dated September 25, 2020, revised February 22, 2021).”

Exhibit N. “Site Plan - Abby Road Village - Residential PRD - McCain Consulting - Sheet C-3 (dated September 25, 2020, revised January 22, 2021).”

Exhibit O. “Site Plan - Abby Road Village - Residential PRD - McCain Consulting - Sheet EC-1 (dated September 25, 2020, revised January 22, 2021).”

Exhibit P. “Site Plan - Abby Road Village - Residential PRD - McCain Consulting - Sheet R-1 (dated October 8, 2020, revised February 22, 2021).”

Exhibit Q. “Site Plan - Abby Road Village - Residential PRD - McCain Consulting - Sheet S-1 (dated January 22, 2021, revised February 22, 2021).”

Exhibit R. Email from the Waitsfield/Fayston Fire Department regarding adequacy of emergency access (dated February 28, 2021)

Exhibit S. Management and Operations Agreement for Abby Road Village, revised February 2, 2021)

Findings:

1. The Board found the application to be complete at a public hearing held on February 2, 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 Article 2, Table 2.4 of the Town of Fayston, VT land use regulations.
3. The applicant’s parcel is adjacent to land owned by Kyle and Jill Ellis, Fred Viens, F & P Dentone Life Estate, Richard Scarzello, James and Dorothy Bisbee, Trustees, Robert Buck, Alexandra and Tasha Urbanowski, Jeremiah and Sarah Rutledge, Peter and Chelsea Turley Jack and Jean Corliss, Douglas and Megan Evans, and Robert and Muriel Griffin.
4. 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 bedroom each. The proposed residences will share a community on-site septic system.
5. Kyle and Jill Ellis live across the street from the applicant are concerned about the traffic that would be generated by the project. Kyle and Jill Ellis were deemed Interested Parties to this application.
6. Rick Scarzello 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. Rick Scarzello was deemed an Interested Party to this application.
7. Fred Viens 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. Fred Viens was deemed an Interested Party to this application.

8. Per Section 8.2 (A), applications for PRDs and PUDs shall be reviewed simultaneously with application for major subdivision review in accordance with the requirements and procedures set forth in Article 7.

9. 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.

10. Pursuant to the subdivision application requirements set forth in Table 7.2 of the Fayston LURs, the application requirements delineated in the column headed “2nd Major Subdivision Hearing” must be satisfied at the outset of the hearing in order for the applications to qualify for the waiver requested. The Board did not find 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 also did not find that the material received conforms to the subdivision application requirements of Table 7.2 for the first major subdivision hearing.

11. Per Section 8.2 (B), At the time of PRD or PUD approval, the DRB shall include in its decision a clear indication of all approved modifications of development standards, and may include conditions related to the location, scale, density, intensity and/or overall design of future development within the PRD or PUD.

12. 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. Additionally, open space shall be clearly defined on the development plan by location, dimensions, and acreage. There are no minimums as to open space size, but it does need to be clearly stated and marked.

13. “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.”

14. For a major subdivision and PRD in which there are multiple units on one lot which are rented out under one ownership, responsibilities such as septic maintenance, plowing, and road repair necessitate the need for covenants or other binding legal documentation as to how this would operate.

15. 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.”

16. The LURs mandate one principal dwelling per lot. However, per Section 8.1 (B), “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.”

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.

17. Section 4.10 defines a “mobile home park” as 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. Furthermore, a “mobile home” is defined as a prefabricated dwelling unit that is (1) designed for continuous residential occupancy; and (2) is designed to be moved on wheels, as a whole or in sections. Accordingly, a tiny home on wheels constitutes a mobile home. The applicant stated that there would be no more than three total tiny homes on wheels, with the others being either a converted shed or built from wood.

18. Per Section 4.10 of the Fayston LURs, three or more tiny homes on wheels situated on a single parcel constitute a mobile home park. However, the DRB is willing to waive this designation per Section 8 for Planned Residential Developments.

19. The Fayston subdivision regulations refer to the Vermont Agency of Transportation (“VTrans”) Standards with regard to road width. Based on the ITE Trip Generation Manual, a PRD containing six homes generates 45 trip ends per day, which includes 3 morning (typically 7-9 AM) peak hour trip ends and 4 afternoon/evening (typically 4-6 PM) peak hour trip ends. The existing house on the applicant’s adjoining property generates 10 trip ends, 1 each AM/PM peak hour, and the apartment generates 7 trip ends, also 1 each peak hour. Total trip ends will be 62/day, 5 during the AM peak and 6 during the PM peak. Per Table 6.1 of the Fayston Land Use Regulations, for a design speed of 25 mph a project with 62 trip ends requires an 18’ wide road with no shoulders. Applicant has requested a waiver of this standard and maintain the current driveway’s width, which has been described as being between 12 and 14 feet wide. Applicant stated that the waiver is requested due to financial constraints .

20. There is an existing pull-off area which will be widened 8-feet. The applicant proposes to widen the curb cut to 20 feet. The existing driveway varies between 12 and 14 feet in width. The applicant 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.

21. 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.” The Applicant has provided a “hammerhead” style terminus at the end of the access driveway.

22. There will be a common leachfield (mound system), in addition to the replacement easement for Lot 1’s existing primary home.

23. All units will have two parking spaces.

24. One drilled well will serve as the water source for the entire project. A well house will provide a pressure tank and distribute flows to each house.

25. Currently, stormwater drainage occurs via overland flow. A driveway culvert at the intersection with North Fayston Road draining towards the Ellis property. The impervious surfaces associated with the 6-unit PRD will drain via overland flow towards North Fayston Road.
26. A proposed right-of-way for the subdivision road will extend from North Fayston Road to the 6-unit PRD.
27. Per Section 6.8 (A) (3) of the LURs, existing and proposed utilities shall be shown shared with other utilities or roads. There is an existing electrical transformer at the lower edge of the meadow. All electric and telecommunications utilities shall be underground. A secondary electrical pedestal is proposed in the development area.
28. Per Section 6.8 (A) (3), “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.” Per Section 6.8 (A) (2), “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.”
29. All utilities will be buried. The proposed layout (subject to power company review and approval) is depicted on the plan. Heating fuel storage will be in above ground tanks at each site. Solid waste will be managed via screened dumpsters/recycling bins located at the first pull-off.
30. Pursuant to Section 7.1 (E), the DRB may waive or vary one or more of the following, subject to appropriate conditions: application requirements; preliminary plat review and preliminary public hearing requirements for major subdivisions; *and subdivision review standards set forth in Article 6*. The request for a waiver shall be submitted in writing by the applicant with the subdivision application, and it shall be the responsibility of the applicant to provide sufficient information to justify the waiver and to enable the DRB to reach a decision. In granting such waivers, the DRB shall require such conditions as will in its judgment secure substantially the objectives of any waived or varied requirements of these regulations.
31. The requested waivers sought by the applicant were submitted in writing per Board request. These requests included waiver of road standards to allow the existing driveway to be used as the road to access the PRD – a road which would be between 12’ – 14’ (as opposed to 18’ wide per Section 6.1) in width with three pull-offs and brush-cleared to improve site-distancing. The applicant also requests to combine the subdivision and conditional use hearings into one. Applicant requests a waiver to submit the survey mylar after the project is approved is requested. Applicant also seeks a waiver to allow for the six units to be on one single parcel per Section 8. Applicant also requests a waiver of the property line setback around the perimeter of the PRD parcel.
33. The Board stated that in order to consider the waivers requested as part of the PRD process, a documented commitment to the nature of the project as a source of permanent housing through

a minimum lease term was necessary. Applicant noted that the specific use of the project will be to provide a residential community of modest homes that allow residents to live simply and at lower cost than typical subdivisions. Applicant will remain the owner of the parcel and will enter into lease agreements with the residents, which will vary in duration depending upon the length of time each resident lives or stays in the community. Applicant claimed that the project will be a *de facto* affordable housing community; the board clarified that for the purposes of review of the land use regulations, this project is not considered an affordable housing project.

34. Per the Board's request for a phasing plan, applicant stated that the units will consist of not more than three pre-constructed "tiny homes on wheels" and connect to the community wastewater disposal system, community water system, and electrical/internet service. The remaining units will consist of wood-framed structures built on concrete foundations also connected to these community systems. The first home in the community will be the existing building on Site #3 which will be retrofitted to become a one-bedroom cottage. This retrofit will be completed in 2021. A second cottage, will also be built in 2021. The remaining four cottages will be phase in at a maximum rate of 2/year.

35. The Board requested an outline of the operations and maintenance needs of the project. Applicant submitted a Maintenance and Operations Agreement prepared by attorney Thorndike purporting to satisfy the Board's request. Per this agreement, the applicant as the property owner and landlord will be responsible for the operation and maintenance of the project, including road maintenance and repairs, trash and recycling pick-up, community wastewater disposal system, community water system, electrical/internet service, snow removal and other such operations and maintenance needs. Applicant will be responsible for payment of costs for these services . Any successive owner to applicant Dreyer would have the same duties and responsibilities as she with regard to the occupants of the PRD.

36. The Management and Operations agreement states a 6-month minimum lease term. The Board believes this is necessary given that the applicant is proposing very significant waivers from the land use regulations, including waivers from road width and setback waivers down to zero. Without some sort of commitment to affordability or minimum lease terms, there is nothing on paper that could prevent the applicant or future owner from turning this PRD into a set of short term rentals, which would be a dramatic departure from the character of the neighborhood and the principles of the Town Plan.

37. Applicant met with the fire department at the site with regard to adequacy of access and turnaround. The plans were revised per that discussion, with an expanded road entrance and a revised cottage location to allow for greater turnaround area. Tripp Johnson from the Waitsfield/Fayston Fire Department submitted follow up comments requesting more space for the turnaround. The plans were so revised to the satisfaction of the fire department. The department provided ZA Weir with a formal written approval via email on access and turnaround.

38. A Road Plan depicting the existing road, proposed pull-offs, proposed edge clearing, and road profile was submitted to the satisfaction of the Board. Conceptual grading around the proposed cottage sites was provided.

39. The Board was not amenable to the applicant's request to waive all setbacks as proposed. There is concern that these non-conforming setbacks could lead to issues if ownership of applicant's primary residence with remaining lands and the PRD village ever split. Per Section 3.6 (D), the Board can approve setback waivers for side and rear property lines down to 10 feet, and centerline setbacks from 65 feet down to not less than 45 feet. Per the revised plan as submitted, all units shall be no closer than 10 feet to the property lines and no closer than 25 feet to the centerline of the road.

40. The plans show disturbance of slopes between 15% - 25% in grade in some of the house site locations. The application did not include any conditional review request. The Board agreed that the steeper slope disturbance could be reviewed as part of the subdivision and PRD application.

41. Per Section 8.2 (C), approval granted by the DRB under this section for a PRD or PUD that involves the development of one or more conditional uses shall not exempt the proposed development from conditional use review in accordance with Article 5. An application for conditional use approval within an approved PRD or PUD shall incorporate applicable conditions of subdivision and PRD or PUD approval.

42. The Board reviewed the proposed stormwater management and erosion control measures as depicted on the plans. Erosion control measures are delineated on the project detail sheet and include silt-fencing, erosion control blankets and stone-line ditching. Per the Board's request, applicant revised the erosion control plans to include biodegradable erosion control blankets to be used on slopes greater than 3H-1V.

43. Applicant stated that a Construction General Permit would not be necessary as the project will not result in earth disturbances over one acre.

44. The Board reviewed the proposal under Section 5 conditional use. The Board found all the conditional use application requirements to have been met. The Board reviewed the general and specific review standards pursuant to Section 5 and found that those standards had been met. Having reviewed the application pursuant to the conditional use standards of Section 5, the Board found that any potential adverse effects from this project did not constitute an undue adverse effect.

Decision:

DRB members voted unanimously to approve Subdivision application #3599, Planned Residential Development application #3600 and the associated conditional use associated with steep slope disturbance, with the following conditions:

1. Any deviation from the approved plans will require additional review by this Board. Applicant shall provide a letter from their engineer once site improvements (i.e. road widening, grading of building areas, construction of common utilities) are constructed that the project was built in conformance with the design plans or provide record drawings illustrating the changes made during construction.

2. A minimum 6-month lease term shall be established and memorialized in the Maintenance and Operations Agreement and must be followed in perpetuity. This document shall be fully executed by all parties listed on the document (including the landowner and members of the Development Review Board). This document shall be revised to reflect all the latest site plans in effect, including any record drawings that are created.

3. Obtain and follow all State and Federal permits. Copies of these permits shall be submitted to the Town of Fayston. Copies of any drawings that supersede the design shown on the materials presented to the DRB shall be submitted to the Town of Fayston.

Dated at Fayston, Vermont, this 22nd day of April, 2021.

A handwritten signature in black ink, appearing to read 'S Mullen', is written above a horizontal line.

Shane Mullen, Chair of 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.