

Development Review Board, Town of Fayston, VT
Notice of Decision for Application No. 3630

Applicant: Robert & Diane Schellack

Application Number(s): 3630

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 on slopes in excess of 15% in grade.

Parcel ID: 03-119.000

Location of Property: off Stony Hill Road, Fayston

A. GUIDING ORDINANCE and POLICY PROVISIONS

1. Fayston Land Use Regulations, as amended June, 2018:
 - a. Table 2.4 (Rural Residential District)
 - b. Section 3.4 (C) (Sediment and Erosion Control Standards)
 - c. Section 3.4 (E) (Development on Steep Slopes)
 - d. Section 3.1 (B) (4) (Driveways)
 - e. Article 5 (Conditional Use Review)

2. Fayston Town Plan, as adopted September 22, 2020
 - a. Section 5.10.4 (Rural Residential District)

B. MATERIALS SUBMITTED

1. On February 12, 2021 applicant submitted a conditional use application (#3630) including a cover letter, responses to the General and Specific Review Standards (Section 5.4 Conditional Use review), and list of abutters. Applicant also submitted various plans which are superseded by those outlined below.
2. On March 1, 2021 applicant submitted proof of mailing of notice to abutting landowners
3. ZA Weir scanned State Wastewater permit WW-5-5022 and relevant supporting documentation.
4. ZA Weir scanned the various materials pertaining to stormwater discharge permitting dating back to 1988.
5. On March 16, 2021 ZA Weir submitted a list of requested changes and/or additions to the plans as initially submitted.
6. On March 30, 2021 applicant submitted a site plan titled "Overview Plan – Robert and Diane Schellack – Proposed House and Driveway, revised 3/30/2021 ("Miscellaneous Driveway Edits per DRB Comments") (Sheet C-1)

7. On March 30, 2021 applicant submitted a site plan titled “Slope and Driveway Plan – Robert and Diane Schellack – Proposed House and Driveway, revised 3/30/2021 (“Miscellaneous Driveway Edits per DRB Comments”) (Sheet C-2)
8. On March 30, 2021 applicant submitted a site plan titled “EPSC and Driveway Details – Robert and Diane Schellack – Proposed House and Driveway, revised 3/30/2021 (“Miscellaneous Driveway Edits per DRB Comments”) (Sheet C-3)
9. On March 30, 2021 applicant submitted a plan titled “Schellack Property Drianage Overview Plan, dated 3/30/2021

C. PROPOSED FINDINGS OF FACT

1. This property is located off Stony Hill Road and consists of 33 acres of undeveloped land. The parcel is identified as #03-119.000 in the Rural Residential District.
2. Notice of the hearing was properly published. On February 18, 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. The Board found the application to complete at a hearing on March 9, 2021. The application was continued and a second hearing was held on April 6, 2021.
4. The Board visited this site on March 23, 2021.
5. Eve Silverman and Gene Scaperotta are abutting landowners within this subdivision and expressed concerns over the stormwater discharge permitting that would be affected by the proposed development. They were deemed Interested Parties to this application.
6. Brian and Annika Holtan are abutting landowners within this subdivision and are concerned about runoff and erosion control, and wished to understand the character of the area after the installation of the driveway and piping to the common leach field on their property. They were deemed Interested Parties to this application.
7. Kim and Andy Phelan are abutting landowners within this subdivision and have the same concerns as the other abutters. They were deemed Interested Parties to this application.
8. This property constitutes Lot 2 of the Genge subdivision.
9. The Genge subdivision was issued Stormwater Discharge Permit 1-0738 in 1988. This permit expired in 1993. An amended application was filed in 2007. The Town was approved for an Authorization to Discharge permit No. 5545-9010 in January 2008. This permit authorized the discharge of treated stormwater runoff from the Genge subdivision located on Strong Road and Stony Hill Road.

10. Per the 2007 amended application, Wilcox & Barton found that that the total impervious surface from the existing 3 developed lots in this subdivision was 1.17 acres. Assuming a similar buildout on Lot 2, construction of a house and driveway would add an additional 0.21 acres of impervious surface. With a 0.15 acre area of contingency, the total impervious surface area would be 1.53 acres.
11. Applicant's engineer will be obtaining all necessary stormwater permits from the State pursuant to the changes in the Schellack project. That will include at a minimum coverage under the Construction General Permit, and a new Operational Stormwater Permit for the additional impervious surface generated by the Schellack development alone. There will be no amendments to the existing permit. The existing stormwater permit covers impervious surface to approximately 8+50, and the driveway from that point forward will require coverage under a new stormwater permit. The project will be constructed to current stormwater standards.
12. Per Section 3.4 (A), any development that requires a state stormwater permit is exempt from the approval requirements of Article 9, Section 9.1 (B) (3). Section 9.1 (B) (3) concerns Stormwater and Erosion Control Approval in accordance with Section 3.4. However, the Town of Fayston would prefer that the Low Impact Development Standards described in this Section be incorporated in the overall project design of State permitted projects as well.
13. Pursuant to Section 3.1 (B) (5), driveways exceeding 500 feet in length shall include, at a minimum, one 12' x 30' pull-off area based on site distance visibility or every 500 feet of driveway whichever is less.
14. The approximate length of the proposed driveway is 1,390 feet with pull-offs/reference stations every 500 feet. The driveway is proposed with a width of 14 feet. The steepest section of the driveway is about 14% in grade located at the beginning of the drive.
15. Pursuant to Section 3.1 (B) (4), driveways that, in any 50 foot section, exceed an average grade of 15% shall use best construction practices and submit an erosion control plan in accordance with Section 3.4.
16. Pursuant to Section 3.4 (C) (1) (d), development on steep slopes equal to or in excess of 15%, or which results in such slopes, shall be subject to conditional use review in accordance with Article 5.
17. Pursuant to Section 3.4 (E) (1), applicability of development on steep and very steep slopes is described as: (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, and private roads and driveways that exceed an average gradient of 15% over any 50-foot section, as determined from mapped contour intervals or site inspection, shall be subject to conditional use review and approval by the Development Review Board under Article 5 and the requirements of the other Subsections; and (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 limited site improvements necessary to facilitate development on contiguous land with a slope of less than 25% gradient, which are subject to conditional use review and approval by the Development Review Board under Article 5, and the requirements of the other Subsections.

18. A culvert must be installed at the bottom of the proposed driveway in order to divert runoff away from the clustered leach fields. There are natural grades and existing drainage patterns and infrastructure, including swales, culvert and check dams. A retention pond could be utilized to handle additional drainage from the added development from this project.
19. Per the revised plans submitted on March 30, 2021, the driveway location has been revised as it approaches the building envelope. The revised plans also add and update culvert locations, including the one located at the base of the driveway. Potential stormwater pond locations are also identified.
20. Applicant's aerial photo shows the existing drainage patterns compared to the proposed driveway and building envelope. Culverts have been sited to preserve the existing drainage patterns in the post-development condition. All runoff is directed to the existing culvert under Stony Hill Road which is referenced in the existing stormwater permit. Applicant states that all newly permitted impervious and associated stormwater infrastructure will need to meet ANR standards for reducing post-development flow such that the overall flow directed to the culvert will not increase.
21. The stormwater infrastructure is still being designed. Applicant anticipates needing about 3 structures, likely in the neighborhood of 10' by 30' to 15' by 40'. Given the shallow to ledge and potentially high groundwater area, applicant anticipates these structures will be some type of "tier 3 practice" of lined bio-retention ponds (rain garden) or gravel wetlands.
22. Pursuant to Section 5.4, the project must meet the General Review Standards stated therein. Conditional use approval shall be granted by the DRB upon finding that the proposed development shall not result in an undue adverse effect on the 1) capacity of existing or planned community facilities and services, 2) character of the area affected, 3) traffic on roads and highways in the vicinity, 4) bylaws in effect, and 5) utilization of renewable energy sources. In addition these general standards, the Board may also consider and attach specific conditions to conditional use approval as appropriate to avoid, minimize or mitigate the adverse impacts of a proposed development, including 1) siting and dimensional standards, 2) performance standards, 3) access and circulation standards, 4) landscaping and screening standards, and 5) stormwater management and erosion control standards. The Board found these standards to have been satisfied by the evidence submitted.

D. CONCLUSIONS OF LAW

Based on its review of the application materials, submitted survey, presented testimony, and the Findings of Fact above, the Fayston Development Review Board hereby concludes this application as proposed, and when finalized and implemented with the conditions below, does meet the appropriate criteria of the Fayston Land Use Regulations and Subdivision Regulations and is in conformance with the Fayston Town Plan.

E. DECISION

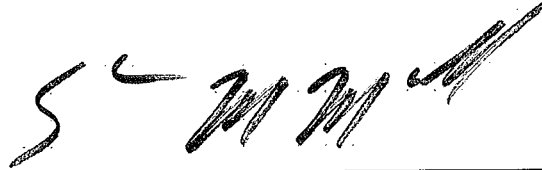
Subdivision application #3630 is hereby approved, subject to the following conditions:

1. Obtain a new Operational Stormwater permit from the State of Vermont and send copies thereof to the Fayston Zoning Administrator.
2. Provide engineer certification to the Fayston Zoning Administrator that the driveway was constructed according to the plans submitted to the State in the approved Operational Stormwater permit.
3. Provide engineer certification to the Fayston Zoning Administrator that the project was built according to the plans as approved by the DRB.
4. Provide record drawings of the final construction to the Fayston Zoning Administrator.
5. Obtain and follow all State and Federal permits.

Dated at Fayston, Vermont, this 12th day of May, 2021.

* Signed May 18th, 2021

(SW)



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.