

Development Review Board, Town of Fayston, VT
Notice of Decision for Application No. 3629

Applicant: John Thrailkill

Application Number(s): 3629

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: 14-074.000

Location of Property: Maple Ridge 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 (#3629) including a cover letter, responses to the General and Specific Review Standards (Section 5.4 Conditional Use review), and list of abutters.
2. On February 12, 2021 applicant submitted a site plan titled “John Thrailkill – Applicant – Erosion Prevention and Sediment Control Plan – German Flats Road and Sugar Run Road, dated 2/9/2021 (Sheet C-1)
3. On March 1, 2021 applicant submitted proof of mailing of notice to abutting landowners
4. ZA Weir scanned the Notice of Decision (from Fayston Planning Commission meeting 4/6/1999) and approved plans (McCain Consulting) for subdivision application #1716. Applicant Hutchison Dubosque received approval for a 7-lot subdivision off German Flats Road.
5. On March 16, 2021 ZA Weir submitted to McCain Consulting 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 “John Thraikill – Applicant – Erosion Prevention and Sediment Control Plan – German Flats Road and Sugar Run Road, revised 3/26/2021 (“Revisions to address DRB Comments”) (Sheet C-1)
7. On April 12, 2021 ZA Weir submitted to McCain Consulting a list of requested changes and/or additions to the application and plans as originally submitted.
8. On June 2, 2021 applicant submitted a site plan titled “John Thraikill – Applicant – Erosion Prevention and Sediment Control Plan – German Flats Road and Sugar Run Road, revised 5/4/2021 and 3/26/2021 (“Revisions to address DRB Comments”) (Sheet C-1)
9. Memorandum from Gunner McCain dated 5/4/2021 regarding waiver authority under subdivision standards.
10. Memorandum from Gunner McCain dated 6/17/2021 addressing variance criteria pursuant to Section 9.6.

C. FINDINGS OF FACT

1. The property is located off Maple Ridge Road and consists of 8.37 acres of undeveloped land. The property is owned by Karen Mitchell. The parcel is identified as #14-074.000 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 property constitutes Lot A of the approved Dubosque subdivision (#1716).
4. The Board found the application to complete at a hearing on March 9, 2021.
5. Applicant has a deeded easement for the driveway over the abutting land of Joseph Lojko. That easement has a maximum 50-foot width.
6. Abutter Lojko was present for the hearing and deemed an Interested Party to this application.
7. Applicant is also requesting approval of the proposed building envelope. No recorded plat controls placement of the envelope, as subdivision regulations had not been adopted at the time application #1716 was approved in 1998. No revision to the approved plat is necessary.

8. 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.
9. 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.
10. 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.
11. The proposed driveway is approximately 350 feet and 400 feet to the house site. Sections of the proposed driveway exceed 40% in grade. Applicant proposes handling stormwater with erosion control measures and culverts. Some contouring will be done to shed water around the turnaround. The Board recommends having a swale on the high side to redirect stormwater around the driveway. The Board also recommends including a device at the end of the swale to dissipate the energy and promote sheet flow on the downhill bank.
12. In applicant's initial submission, at the intersection of the driveways, the plans showed discharge onto Maple Ridge Road. A revised design was necessary to include moving the culvert uphill.
13. Pursuant to Section 3.4 (E) (2), in addition to the conditional use application requirements of Section 5.2, conditional use approval for development on steep and very steep slopes shall be contingent upon the submission and Board approval of a grading plan drawn at scale which indicates existing and proposed grades with contour lines at two (2) foot intervals within any area of proposed activity, site disturbance or construction, including access routes. The grading plan shall depict slope classes of 0-14.9%, 15-24.9% and 25% or more, based on two (2) foot contours.
14. The proposed building envelope defines the limits of the grading. The 25-foot side yard setback provides ample space such that no encroachment onto the Lojko land will occur.
15. 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.

16. The Board visited this site on March 23, 2021.
17. An 18” culvert is proposed to shed water before flow gets to Maple Ridge Road.
18. Per the plans as submitted, there is a 15% incline at the start of the driveway off Maple Ridge Road.
19. Pursuant to Section 3.1 (B) (4), “No driveway shall exceed a slope of 3% within 35 feet of the center line of a road, or shall intersect with a road at an angle of less than 70° within 35 feet of the center line of a road.”
20. Pursuant to Section 9.6, variances can be granted by the Board only if all of the following facts are found:
 - 1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located. Per applicant’s submission, “The subject lot was created in the 1990’s, prior to the current zoning restriction prohibiting building envelopes on slopes of 25% or more, and the original permitted plan depicted a house on slopes over 25%. A variance of the road standards, specifically the requirements of §3.1(B) (3), which specifies requirements for both driveway slope near the intersection and the angle of that intersection. In order to access the proposed building envelope where slopes are <25% a variance for the driveway is required.”
 - 2) Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property. Per applicant’s submission, “Site constraints including steep slopes, wetlands and a septic easement prevent the site from being developed in conformance with the regulations.”
 - 3) The unnecessary hardship has not been created by the appellant. Per applicant’s submission, “The hardship is created due to naturally occurring site conditions, which

were not created by the applicant. The lot was created prior to the enactment of current zoning, so the current requirements could not have been considered when the original subdivision occurred.”

4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare. Per applicant’s submission, “The proposed residential project fits cohesively with existing residential development in the direct vicinity. Single-family dwellings are a permitted use in the district, and many of the lots in the area were constructed on similar sites, requiring driveways on steep slopes. The project as proposed will not substantially or permanently impair the appropriate use or development of an adjacent property, nor will it reduce access to renewable energy sources or be detrimental to the public welfare.” Applicant has been in communication with the abutting landowner Lujko as to what effects the development of this driveway would have on Joseph Lujko’s ability to access his own parcel. Abutter Lujko is satisfied that he can develop his parcel given the latest plans submitted by McCain. Abutter Lujko affirmed this with the Board at the end of the June 8 meeting.

5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan. Per applicant’s submission, “This request represents the minimum necessary to afford relief, and varies minimally from the regulations and the plan.”

21. The Board finds the variance criteria of Section 9.6 to have been sufficiently addressed.

D. CONCLUSIONS OF LAW

Based on its review of the application materials, 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 is in conformance with the Fayston Town Plan.

E. DECISION

Conditional use application #3629 is hereby approved, subject to the following conditions:

1. Stake out the driveway prior to construction and allow for a site visit from the Zoning Administrator.

2. Project engineer shall certify in writing that construction will not cause an undue adverse impact due to stormwater runoff or erosion.
3. Project engineer shall certify in writing that construction was completed in conformance with the approved plans.
4. Construction must abide by the provisions of the Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control
5. Any revisions to the approved plans require additional review by the Development Review Board
6. Obtain and follow all State and federal permits.

Dated at Fayston, Vermont, this 21st day of June, 2021.

A handwritten signature in black ink, appearing to read 'S M M', is written over 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.