

**Development Review Board, Town of Fayston, VT
Notice of Decision for Application No. 3706 & 3707**

Property Owner & Applicant: Andy Kaplan

Parcel ID: #06-052.002

Reason for Application: 3 lot Subdivision and Conditional Use Review for development on steep slopes (in excess of 15% grade).

Public Hearing Attendees: Attending DRB Members: Shane Mullen (Chair), Mike Pete Ludlow, Dan Young (Vice Chair), Nick Skiwra (alternate) ZA: Hanna Neill; Minutes Taker: Betsy Carter; Public: John Hammond, Margo Wade, (Zoom): Joel Rhoades, Jim Westehelle, Marisa Mauro, Andy Kaplan, Gunner McCain, Ryan Lynch, Jane Brodwyn, Linda Landrum

Introduction and Procedural History:

1. The Subdivision application was filed on December 2, 2021. The subject parcel is parcel ID# 06-052.002, located at 2122 Bragg Hill Road. Applicant Andy Kaplan is requesting approval under Articles 6-7 of the Fayston Land Use Regulations for a 3 lot subdivision. Conditional use review is also required pursuant to Section 3.4(E) & Section 3.4(C)(1)(d) for development on slopes in excess of 15% in grade. 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 January 13, 2022 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 public hearings which occurred on February 1, 2022. 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 #3706 including a cover letter, list of abutting land owners, and a sample abutting land owner letter

Exhibit B. Conditional Use application #3707 including responses to the General and Specific Review Standards Section 5

Exhibit C. A letter from McCain Consulting, Inc., detailing revisions to the project in response to a memo dated January 5, 2022 issued by the Zoning Administrator.

Exhibit D. Vermont Wetlands Program Permit Application 3-9025

Exhibit E. A photograph of the inside of a culvert that runs under Stagecoach Road

Exhibit F. A site plan titled, "Overview Plan Andrew Kaplan & Winship Three Lot Subdivision" C-1 by McCain Consulting Inc., last revised January 17, 2022.

Exhibit G. A site plan titled, "Slope Analysis & Clearing Plan Andrew Kaplan & Kate Winship Three Lot Subdivision", SC-1 by McCain Consulting Inc., last revised January 17, 2022.

Exhibit H. A site plan titled, "Town EPSC, Slope & Driveway (Lot 2) Plan Andrew Kaplan & Kate Winship Three Lot Subdivision", T-1 by McCain Consulting Inc., last revised January 17, 2022.

Exhibit I. Scans of certified receipts of abutter notice

Findings:

1. The property is located at 2122 Bragg Hill Road and consists of 18 acres. The property is owned by Andrew Kaplan. The parcel is identified as #06-052.002 in the Rural Residential District.
2. Parcel #06-052.002 has one previous permit a Building Permit #3065 (2009).
3. This parcel is adjacent to land owned by Edward Storrs, Jr., Ryan and Amy Elizabeth Lynch, Thomas Folger & Dorothy Folger Trustees, Smallholding, LLC., Rudolph & Anna Marie Skalka.
4. 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."
5. Pursuant to Section 7.1 (B) (1), a minor subdivision "Shall include lot line or boundary adjustments between existing lots that do not result in new or nonconforming lots; the subdivision of land, or the re-subdivision of a previously subdivided parcel, that results in the creation of five or fewer lots, regardless of any change in ownership; and amendments to an approved subdivision plan that will not substantially change the nature of any previous subdivision or conditions of approval."
6. The proposed project is for the subdivision of an 18 +/- acre lot owners by Andy Kaplan at 2122 Bragg Hill Road in Fayston. The proposed subdivision includes the existing house on Lot 1 of 7.9+/- acres, and proposed single-family residences on both Lot 2: 5.8+/- acres and Lot 3: 4.2+/- acres. A 3-lot subdivision *constitutes a minor subdivision*.
7. The proposed lots meet the applicable lot size (1 acres) and setbacks (65 feet to centerline and 25 feet to side and rear property lines) for the Rural Residential District.

8. Per Applicant's submittal, the area of development is located on steep (greater than 15% grade) and very steep (greater than 25% grade) slopes. The existing and proposed residences will be served by on-site water and sewer infrastructure. The current residence has a driveway on Bragg Hill Road, while the proposed residences will have individual driveways on Stagecoach Road.
9. Pursuant to 6.1 (A) The DRB shall evaluate any minor or major subdivision of land as defined in Section 7.1 in accordance with the standards set forth in this Article. Where these standards conflict with other provisions of these regulations, the more stringent shall apply.
10. 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.
11. 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.
12. 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.
13. 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.

14. Applicant states that existing stone wall on western property line will remain undisturbed.
15. Applicant proposes specific areas for tree clearing and tree thinning, depicted on sheet C-3 of the plan set. "Tree thinning" consists of the removal of up to 65% of trees present.
16. Applicant has developed a site-specific erosion prevention and sediment control plan, which includes limitations in the allowed square footage of earth disturbance for construction of the proposed houses and Best Management Practices to prevent silt from migrating from disturbed areas to undisturbed natural areas.

Decision:

DRB members voted as follows to approve subdivision application #3706 & #3707 with the following conditions:

1. Applicant provides a revised Sheet C-1 with the "Preliminary" stamp removed.
2. Applicant shall provide a revision to the plan set revising the tree clearing and thinning limits to reduce them as discussed at the February 1 DRB hearing.
3. Tree stumps shall not be removed in the areas depicted on the plan set for tree thinning.
4. Tree thinning of up to 65% shall be conducted in a uniform manner across the areas specified in this application.
5. ZA shall be notified prior to tree cutting activities to verify that the proposed areas for clearing and thinning are in conformance to the approved plans.
6. Applicant to revise Lot 3 building envelope on Lot#3 to avoid steep slopes.
7. Obtain and follow all necessary State and Federal permits.
8. Submit to the Town Clerk the required mylar plat for recording within 180 days of the date of this decision.

Peter Ludlow: **YES**/no/abstain/absent/recuse

Shane Mullen: **YES**/no/abstain/absent/recuse

Nick Skiwra: **YES**/no/abstain/absent/recuse

Daniel Young: **YES**/no/abstain/absent/recuse

Ky Koitzch: yes/no/abstain/**ABSENT**/recuse

Mike Quenneville: yes no/abstain/**ABSENT**/recuse

Dated at Fayston, Vermont, this 15th day of February, 2022.



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.