

TOWN OF FAYSTON
Development Review Board Minutes
Tuesday September 6th, 2022

Attendees

Fayston DRB: Shane Mullen, Mike Q, Ky K, Jim K, Pete, Dan Young

Fayston Zoning Administrator: Jason Wilson

Minutes Taker: Betsy Carter

Applicants/Public: Greg & Sandy Owens, George Guzzi, Brooke Dingledine, George McCain, Eliza Graves, Freddie Graves, Kendall McCausland, Pat Livingston, Josh & Danielle Livingston, Ruth & Jeff Halpin, Heidi & Raymond Schenk, Chad Yonkman, Mark Bannon, Kim Laidlaw, John & Ruth Rowles

Applicant: Danielle and Joshua Livingston

Application Number: 3750

Type of Hearing: Requesting a Minor Subdivision Hearing

Parcel ID: 06-060.001

Location of Property: 246 Phen Basin, Fayston

- 1) Interested Parties present
 - a. *Motion for George Guzzi to be an interested party for Livingston application by Ky, seconded by Mike. All in favor, none opposed. Motion carries.*
 - b. *Motion for Pat Livingston to be an interested party for the Livingston application by Ky, seconded by Mike. All in favor, none opposed. Motion carries.*
 - c. *Motion for Eliza Graves and Kendall McCausland to be interested parties for the Livingston subdivision by Dan, seconded by Mike. All in favor, none opposed. Motion carries.*
- 2) Overview of Application
 - a. Prior review of sketchplan from prior month; current local regulations do not provide a straightforward path for a deferred lot.
 - b. Affidavit provided stating that no development to occur without wastewater and required design review for a developable lot.
 - c. Brooke: In review of the materials, previously in 2018 this property was originally 16.5 acres and a 2.03 acre lot was subdivided for a mobile home. This waiver was previously used for that subdivision. The affidavit is provided so that nothing will be done going forward and that should the lots be developed going forward that the required design and permitting will be completed. We're asking for a waiver as there is no desire to develop the property at this time and do not want to be put into an economic situation that would require development.
 - d. Application completeness: Draft subdivision plat, affidavit, attorney letter, application, adjoining landowner notifications are all received.
 - i. *Motion to find the Livingston subdivision application complete by Mike, seconded by Pete. All in favor, none opposed. Motion carries.*
 - ii. *Motion to find this application a minor subdivision by Ky, seconded by Mike. All in favor, none opposed. Motion carries.*
- 3) Questions from Board
 - a. Ky: I have no questions; I think the information provided is complete.

- b. Brooke: The surveyor (Rob Townshend) recommends that the elevations are not superimposed on the Mylar for quality and readability purposes. Shane: I will acknowledge that what is in the regulations at the moment are a bit more elaborate than what is either stated by other towns or State Statute 24vsa. This is how the Town regulations are drafted and until the LUR are updated, this is what is required in the reportable Mylar.
 - c. Shane: I noticed that there were a few different plan iterations sent and that one was a 2-lot survey? Danielle: I sent that in error and Eliza withdrew it. Shane: So the one for record and exhibit is the 3 lot subdivision? Danielle: Yes.
 - d. Shane: Another thing I noticed on one of the versions and we do have the affidavit, but we do require it stated in the plan of no proposed water supply or wastewater disposal systems. Would you be amenable to that condition? Danielle: Yes. Brooke: Yes if you could provide the exact language required to be placed in the plan. Jim: Would there be any notation on the deed for any potential buyers if these lots were ever sold? Brooke: That is something addressed with Act 250 permits, but I can propose some language and we'd be happy to do that.
 - e. Shane: We'll need to note any conditions that must be resubmitted for our review, but because this plat that we're going to show does not have things like development envelopes and water sewer systems, should anyone buy these lots they will have to come to the DRB for review. Do you have any objections to those conditions? Brooke: (Referecing Act 250 language). In the zoning context, regulations change but Act 250 has remained relatively static. It might become more stringent for the requirements for developer. I'm just trying to prevent from being overly complicated. The waiver itself is a temporal waiver. For example there was one in 2018. Mike: In 2018 it was for wastewater for Jim Darrow's property. Brook: So the waiver applied to the rest of the property and not the lot that was being cut off. The 14.5 acre was waived and now we've come back to you to subdivide further. Anybody buying that property can't do anything with it until they get approvals. Danielle: I just want to add is that the reason we did the septic and well design because it looks better on the market. Our understanding is that we would have to do all that anyway to put those lots on the market. Brooke: That has nothing to do with selling the lot. If the DRB waives the requirements for the two lots, all they're doing is approving the lots. There is nothing preventing the Livingstons from selling the lots to Joe Schmo on the street, but he'd have to go through the legal process to develop the land. It has nothing to do with selling the property. No matter what your selling, anyone that wants to do anything to that land has to come back to the Town for review. This doesn't prevent Danielle from selling the property.
- 4) Public questions
- a. Pat: I agree with the attorney, there's no need to design the septic and water.
- 5) *Motion to close the hearing by Mike, seconded by Ky. All in favor, none opposed. Public hearing closed.*

Applicant: Chad & Amanda Yonkman

Application Number: 3759

Type of Hearing: Requesting Development of Accessory Dwelling on Steep Slopes

Parcel ID: 01-006.003

Location of Property: 252 Stony Farm RD, Fayston

- 1) Interested Parties present
 - a. *Motion to accept Greg & Sandy Owens as interested parties for the Yonkman application by Ky, seconded by Mike. All in favor, none opposed. Motion carries.*
- 2) Overview of Application
 - a. Review of materials: Cover letter, application form, narrative, sample abutting landowner form and list of adjoining landowners.
 - b. *Motion to find application complete by Dan, seconded by Mike. All in favor, none opposed. Motion carries.*
 - c. George: This lot was part of a subdivision several years ago. The Yonkmans would like to build a 1 bedroom accessory dwelling unit (small cabin, about 12' x 16' conditioned space). This is under the conditional use sizing and the State regulations allow up to 800 ft.
- 3) Questions from Board
 - a. Ky: In your letter, there is a perennial stream and 2 wetlands would be delineated on the plan. I'm seeing 3 wetlands and no perennial stream. George: The stream is at the very bottom. Ky: I don't see where it's designated. George: There are some squiggly lines going into a culvert under the road. There are 3 class 2 wetlands. We have no activity near the wetlands, stream, or their associated buffers. The existing water and sewer systems can handle this extra bedroom.
 - b. Shane: There are erosion control and stormwater details on here. Would you have any objections to us putting in our standard conditions? George: That's in our narrative. Shane: And no opposition to the natural erosion control blankets? George: No.
 - c. Ky: That's and existing power pad? Chad: Yes. George: And there will be a path to the cabin, so no additional parking outside of what's there.
- 4) Public Questions:
 - a. No questions from interested parties.
- 5) *Motion to close this hearing by Dan, seconded by Mike. All in favor, none opposed. Motion carries.*

Applicant: Robert Grandfield

Application Number: 3761

Type of Hearing: Conditional Use. Modify Building Envelope

Parcel ID: 03-020.002

Location of Property: Airport RD, Fayston

- 1) Interested Parties
 - a. *Motion Raymond & Heidi Shenk to the Grandfield application by Ky, seconded by Mike. All in favor, none opposed. Motion carries.*
 - b. *Motion to accept for Jeff & Ruth Halpin to the application by mike, seconded by Ky.*
 - c. *Motion for John & Kate Rowles as interested parties to the application by Ky, seconded by Mike.*
- 2) Overview of Application

- a. Review of application materials for completeness: application form, hard and soft copy maps, abutting landowner notices. Application was requesting modification of prior decision made by the PC for the subdivision. On the submitted plans, we noticed that there was development on steep slopes though the application before us today does not include information regarding the development on steep slopes. We can have this hearing regarding the building envelope.
 - i. Questions regarding content: Abutters were appropriately warned per state statute. All return receipts verified.
 - b. Mark Bannon: I worked on this subdivision in 2005. The original approval had a right of way accessing lot #2 (lot in question) through lot #3. Since then, Mr. Grandfield and the lot #3 owner have since abandoned the ROW. The ROW is to be modified for accessing the town highway in addition to the Mylar. Stormwater permits are required for the state as it is a ½ acre of known impervious surface.
 - c. Shane: We can speak to the application before us (subdivision approval), but we will need a separate application for development on steep slopes since it wasn't applied for at the time of the request.
 - d. Ky: Regarding the decision from 2005 that says no development can happen on lot 2 without an amendment provided by the planning commission. Is that what you feel you're applying for, an amendment? So you're trying to build on a lot that requires an amended permit. Mark: Yes the 2005 application had a proposed building envelope with the Mylar. Ky: So you're trying to move a building envelope on a lot that requires an amendment. Shane: Looking at the project narrative from July 14 (reads application). To me, this an application to modify the conditions of a previous subdivision approval. Does that make sense to other members of the board? Ky: On the staff report it states "development on slopes greater than 15% of grade". Jason: It was just part of the finding of fact. Shane: But I think that was an error. I think what we'd be doing tonight is reviewing if the prior application can be modified but noting that other items need to be addressed like development on steep slopes and additional engineering work that may be required. Jim: So that would be modifying this application for the steep slopes? Shane: Yes, we'd have some things coming out of that that would be addressed in memo.
 - e. *Motion to find the subdivision portion complete for the modification of previous provisions of the subdivision approval by Ky, seconded by Pete. All in favor, none opposed. Application found complete.*
- 3) Questions from Board
- a. Mark: As of July 1, the state lowered the requirement to ½ acre of impervious surface, you need a 9050. That is addressed in your regulations under 3.4.a.
 - b. Shane: Looking at the old notice of decision, the decision itself seems to be pretty cut and dry stating that no further development will take place on lot 2. I envision that lot 2 was determined to be undevelopable? Mark: No there was no stormwater/wastewater design. It was a deferred lot. It did have a proposed building envelope at that time (showing prior survey). There is also a septic easement to serve lots 1 & 2. Shane: So this was a 3 lot subdivision? Mark: Correct.
 - c. Shane: Taking a look at the road, the slope itself, on the site plan provided, there were slopes greater than 25% identified in purple. It appears that most of the road are on those slopes. The driveway doesn't appear to meet B71 standards. I

don't see any proposed grading to have the driveway at 3% over the first 35' of driveway. Mark: The title block does state that this is preliminary for review. We're seeking to get feedback. Shane: We'll need to see the design and erosion control measures under B71 for the driveway design. Mark: But isn't this exempt under 3.4.a.? Shane: That is referring to 9.1.b additional permits and approvals as stated in 3.4 (circular reference). I was thinking under conditional use under 5.2.a.6 that the board can request certain site features like wetland delineation, stormwater control, erosion, etc. Mark: But if the state permit is required, it's not under your purview? Shane: That is not my understanding of the regulations. Under article 9.1.b3. I have not come into anything to date that gives up the Town purview over these matters. Mark: Since the state just changed the regulations on July 1, you likely haven't seen this yet.

- d. Shane: The layout of the road seems to be following the path of an existing logging road. I'm not seeing any pull-offs as we do require a pull-off every 500' to allow for passing. All utilities and stormwater features will need to be shown. Mark: we do show the underground utility line. Shane: I noticed that you propose about 2.4 acres of tree clearing around the building envelope but I'm not seeing any contours. Mark: Yes, I received that feedback late on Friday. Shane: It would be good to see slopes from 15 to 25% in addition to the greater than 25% you show.
- e. Ky: What is the blue line you show here (pointing to plan). Mark: There's a well, there's a well shed.
- f. Mike: Will you have a hydraulic study done? Mark: Yes.
- g. Shane: In regard to the development on steep slopes, you can build/impact steep slopes in order to access the less steep area. That would be helpful for us to see.

4) Public Questions

- a. Raymond Shenk: Is the board aware of the logging operation that has impacted the contours of the land and a curb cut? It has changed the runoff situation. Shane: Do the plans before us reflect the current topography and runoff of the site? Mark: It does not reflect the logging operation. I believe the logging operations are almost over and would be returned to current conditions? Are they over? Robert: Yes. Shane: Is the intent to leave the land as it stands or are you intending to return it to what it was? Mike: Isn't it agricultural access? Isn't it 18 months? Shane: When did you take the curb cut out? Robert: About January. Shane: Is your intent to restore the property back to its original condition by next summer? Robert: Well minus the trees.
- b. Raymond Shenk: We have a well shed that extends over to that property (we are across the road). Any work changes the drainage pattern, how does that affect our well? The second concern is that there is a culvert going under the road and the work may be impacting or increasing the waterflow through that culvert. Can our brook handle the additional water? That is a concern with heavy rain. We are not against the land development if it's done right and engineered right. John Rowles: Yes, the runoff is now coming into our driveway. Jeff: The silt pond is now filled in that used to catch the runoff and then met up with the town culvert.
- c. Jason: I've been in communication with David Wilcox (watershed/forestry from the state) and I'm waiting for his email with his findings from his site visit. I don't want to misspeak but will share that information when he sends it.
- d. Raymond Shenk: The design of the driveway in the plan, will it be directly across

from my driveway? If it does, it's a winter safety concern? Shane: Do we have any purview of curb cuts or design? Mike: The Select Board usually reviews that. Mark: The temporary logging road is right across from Mr. Shenk's driveway. Typically, towns do like keep driveways across from each other for emergency access. Shane (reference recording). Will you be doing any pre vs post drainage analysis? Mark: It's just duplication of processes. It would be best for any approval to be conditioned on obtaining those permits. Is there an appeal avenue for a state permit? Or just the Town permit?

- e. George: I was asked by the Halpins to look at something. They are concerned that the property lines do not look like they should. The concern would be that there's a hairpin turn that's only 15' from the Halpin's property line so there's concern with things staying where they need to. Shane: It does appear from this particular plan with the property lines overlaid and there appears to be a discrepancy. Jeff: Yes, we brought it to the Town in 2018 from the new lines from our lot. Shane: So, yours (Halpin) is based on 2018 and Grandfield is based on 2005. Shane: So, going through that particular process there were lines pinned to verify the property lines? George: My understanding is that there's a discrepancy between the design plan and the final. (Discussion around property lines on various plans) Shane: We would need a revised plan showing the correct property lines. Jeff: We believe some of the logging operations some of it has landed on our property. We just want it cleaned up. Shane: The Board doesn't oversee logging operations, just the applications presented before us.
- f. John: From the earlier decision from the prior review, it seems that there is something about the lot not being developed? Shane: (reading from prior decision). John: So that seems cut and dry. Shane: That is something we'll consider in deliberative session. Because of the issues brought up here tonight, we will be issuing a memo outlining the requirements and conditions required for approval.
- g. Jeff: Will they have to apply for a curb cut? Shane: That must be done with the Select Board separately. We're only reviewing the development on steep slopes. Part of our review of the conditional use requirements is what we've referenced with the B71 requirements and engineering details. Jeff: And that stuff has changed over the years? Shane: Yes, things do change. Mark: Is that the purview of the Select Board or the DRB? Shane: It is the DRB for driveway design. Jeff: With the 18 months temporary curb cut, is it up to 18 months, within 18 months, or what is that timeline? Mike: The forestry stuff is up to the state. As the Town tree warden, I only look at trees that may endanger the public.
- h. Ky: Is the biggest issue with that road, is it that the water doesn't pass through the culvert? Raymond: The concern is that the culvert isn't sized appropriately and won't handle a serious rainstorm or hurricane. Jeff: The water used to split and divert to my property and to John's. Since the work has been going on it all is going to John's property. Shane: And let's be clear that engineering design is only for a certain percentage of storms.
- i. Shane: For what needs to happen next, we've had a good healthy discussion as to what has happened now versus when the logging operation ceases versus post development. I think we'll need to have that information for the interested parties to review. For the property line situation, we'll need to have accurate lines

reflecting the lines and the proposed road to ensure the driveway meets the development regulations. A stormwater analysis/narrative will be needed. One thing I noticed on the plan are blue rectangles, what are those? Mark: Potential areas for stormwater measures.

- j. Ky: for the driveway, will you provide a contour map? Mark: Yes, we'll show full design and profile. Shane: So, a driveway profile, full utilities, wastewater. Mark: Is there a preference for underground vs. overhead? Shane: I believe the preference is underground, but I don't recall if there is a regulation.
 - k. Raymond: Can driveways be built over well shields? Shane: That part starts to encroach on State review. Those are the questions the State reviews for water/wastewater permitting. What features can be in a wellshield is not under the purview of the DRB. I do have the concern noted of the presence of the driveway within your well shield and you can request the applicant speak to that, but it's not something the DRB can answer.
 - l. Ky: Do you have other access options? Bob: Nope. Mark: There may be some decision required from the DRB with the removal of the right of way through the Halpins' property? We can't have a landlocked property. Jeff: It's not landlocked. We do have the agreement from 2018 is that the ROW was removed. The existing map with the town shouldn't have the ROW on it. Jason: 2005 was a 2-lot subdivision. 2018 was a boundary line adjustment creating Mr. Halpin's lot from Grandfield's lot. Mark: Isn't that a separate decision (pointing to plan). Jeff: At the time of the lot line change, that was when we were under agreement that the ROW would be removed and that lot line change that was brought to the DRB. Bob: By giving up the ROW, I need access to my land. Shane: But you do have access on Airport Road.
 - m. Jeff: Question around the tax rate on a buildable site? This might not be the purview of the DRB, but he's been taxed on a buildable site.
- 5) *Motion to continue hearing by Mike, seconded by Ky. All in favor, none opposed. Motion carries.*