

Development Review Board, Town of Fayston, VT

Notice of Decision for Application No. 3723

Applicant & Landowner: William Laidlaw and Kimberly Laidlaw

Parcel ID: 01-059

Reason for Application: Development on steep slopes, request for setback waivers

Application Number(s): 3723

Type of Hearing: Approval to convert a seasonal camp to a year-round residence requiring the following Development Review Board review and approval: requesting approval of development on steep slopes in excess of 15% grade under Section 3.4(E); requesting approval for location of a building envelope within 100' of a stream under Section 3.13(C); and requesting approval for development within a 50' stream buffer under Section 3.13(B).

Public Hearing Attendees: July 5, 2022 – Attending DRB Members: Pete Ludlow, Mike Quenneville, Ky Koitzsch, Dan Young (Chair), Jim Donkersloot, Minute-Taker: Betsy Carter, Public: George McCain, Kim Laidlaw, Leigh Williams, Eric Bauer, Chris Anne Bauer, Steve Lindsay, Gunner McCain and Alexandra Urbanowski

Introduction and Procedural History:

- a. The Development Review Board application was filed on March 10, 2022. Applicant requested approval to convert a seasonal camp to a year-round residence under Section 3.6(D)(1) of the Fayston Land Use Regulations for a front setback waiver to 45', approval under Section 3.4(E) development on steep slopes in excess of 15% grade, approval under Section 3.13(C) for location of a building envelope within 100' of a stream, and requesting approval for development within a 50' stream buffer under Section 3.13(B).

The plans were amended to reflect suggestions provided in Memorandum from the Development Review Board dated April 13, 2022 that could, upon review for the final plans, alleviate concerns with the initial submission. The amended Application seeks approval to convert a seasonal camp to a year-round residence requiring the following Development Review Board review and approval: requesting approval of development on steep slopes in excess of 15% grade under Section 3.4(E); requesting approval for location of a building envelope within 100' of a stream under Section 3.13(C); and requesting approval for development within a 50' stream buffer under Section 3.13(B). A copy of the application and supporting paperwork are available at the Fayston, VT town offices.

- b. Notice of the hearing was properly published. On June 16, 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.

- c. Abutters to the property were properly notified of the hearing.
- d. The application and plans were considered by the Development Review Board at a public hearing which occurred on July 5, 2022. The Development Review Board reviewed the application and plans under the Town of Fayston, VT Land Use Regulations, as amended June 2018.

II. The following Exhibits were submitted to the Development Review Board

Exhibit A. **Conditional Use Application #3723**

Exhibit B. **Project Narrative provided by Kimberly and William Laidlaw**, including responses to the Conditional Use Review Standards (Section 5.4).

Exhibit C. **Abutter Notice Letters** to adjoining landowners with project description and list of abutting landowners and proof of notice via certified mail receipts of abutting landowners.

Exhibit D. **Public Meeting Warning** placed in the Valley Reporter on June 16, 2022. This warning was also posted at the Fayston municipal offices, as well as at both the Moretown and Waitsfield post offices.

Exhibit E. **“Site Plan- Kim and Bill Laidlaw: Proposed Single-Family Residence”** dated February 2, 2022, revised May 17, 2022. (C-1)

Exhibit F. **“Details- Laidlaw: Camp Conversion to Year-Round Residence”** dated March 3, 2022. (C-2)

Exhibit G. **“Slope Plan- Kim and Bill Laidlaw: Camp Conversion to Year-Round Residence”** dated February 2, 2022, revised May 17, 2022. (C-3)

Exhibit H. **“Memo from the Zoning Administrative Office - Kim Laidlaw Conditional Use Application #3723,”** dated April 13, 2022

Exhibit I. **Wastewater System and Potable Water Supply Permit; Permit Number: WW-5-8792**

Exhibit J. **Building Drawing**

III. Findings

1. The Board found the application to be complete at a public hearing held on July 5, 2022.

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 Thomas & Joyce Rogan, Trustees, Eric & Chris Ann Bauer, Raymond Julien, Dale Manning & Kristen Maxfield, Chad Stanclift, and Leigh Williams.
4. The applicant's 0.5-acre parcel currently consists of a seasonal camp with no onsite potable water and a wastewater disposal system of unknown type and location.
5. The applicant's parcel's eastern property line is a stream, and another stream is present on the southwesterly corner of the parcel.
6. The applicant's proposed structure would be the conversion of a seasonal camp to a 22'x 24' residence, new potable water supply well, wastewater disposal system and improved driveway to support a year-round residence.
7. Section 3.4(C) states that the purpose of the Land Use Regulations' Sediment and Erosion Control Standards are to ensure "that existing site features that naturally aid in stormwater management are protected to the maximum extent practicable." The forested land cover on the parcel proposed for development constitutes those features that naturally aid in stormwater management. This project will result in the removal and/or disturbance of the trees in an area of approximately 2,500 square feet that aid in stormwater management. This includes approximately 835 square feet of tree-covered land within the 50-foot buffer for both streams on the property.
8. The applicant has requested a waiver of the 50-foot stream setback buffer to construct the project.
9. Section 3.4(C)(2) states that "development shall not result in an undue adverse impact on fragile environments, including wetlands, wildlife habitats, streams, lakes, steep slopes, floodplains and vegetated riparian buffers."
10. Section 3.4(C)(2)(c) states "environmentally sensitive areas, such as steep slopes shall be a priority for preservation and open space".
11. Section 3.4(C)(2)(c) states "forested lands located on stream and wetland buffers and steep slopes are priority areas and are subject to regulation in Section 3.13."
12. Based on the foregoing, the DRB determines that the project, due to the size and extent of the stream setback waivers requested, would create an undue adverse impact on the streams under Section 3.4(C)(2). The proposed development has an unfavorable impact on that resource as structures are located within the 50-foot buffer of both proximate streams and will require permanent removal of the existing forested lands within the buffer.

13. Pursuant to Section 3.4(E)(1)(a)&(b), applicability of development on steep and very steep slopes is described as: (“a)(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...(b)(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.”
14. The development area is located on slopes up to and exceeding 25% in grade. The wastewater disposal system is located on steep (15% - 25%) and very steep (>25%) slopes. The potable water supply is located on steep slopes. The limits of earth disturbance include an uphill diversion swale on slopes of approximately 70%. The driveway is located on steep slopes.
15. Approximately 5,000 square feet of land will be disturbed as part of this project. This includes approximately 3,400 square feet of impact to steep (15% - 25%) and very steep (> 25%) slopes out of a total amount of earth disturbance of 5,000 square feet, which amounts to approximately 67% of the project area. In addition, the proposed access for a drilling rig to the potable water well is approximately 10 feet wide, and it impacts and crosses steep (15%-25%) slopes.
16. Based on the locations of the building envelope, driveway and septic system as shown in the application materials, the DRB finds that this project will not be sited to avoid areas of steep and very steep slope in order to minimize the need for sit clearing, grading, cut and fill pursuant to Section 3.4(E)(3)(a). No proposed grading plan was furnished with the application materials, and the potential additional impacts to steep and very steep slopes was not able to be determined. However, these impacts will be in addition to those described above and would not mitigate those impacts.
17. The DRB concludes that this project will not “protect areas of steep slope within the Town of Fayston from the adverse effects of site disturbance and development” as Section 3.4(E) describes.
18. The existing parcel size (0.5 acres) is less than the minimum lot size stated in Table 2.4(D) of the Fayston Land Use Regulations. As per Section 3.5(A) of the Land Use Regulations, this existing small lot may be developed for the purposes allowed in the district in which it is located. Also, they shall be subject to all other applicable requirements of these regulations, including dimensional and setback standards set forth in Article 2.
19. Due to the unique geometry of this parcel, including an eastern property line that is defined by the centerline of a stream, this lot is unable to be developed unless multiple setback waivers are granted by the DRB. As the project proposes multiple waivers from setbacks and other dimensional requirements, it does not comply with the regulations in Section 3.5(A).

20. A portion of the proposed wastewater disposal system is located within the 50-foot stream buffer. The proposed water supply well and piping are located within the 50-foot stream buffer.
21. Yearly inspections of the wastewater system for functionality, reported to the Town of Fayston, would be completed to ensure proper function and identify future issues with functionality.
22. Section 3.13(B) states, “No development, excavation, landfill, or grading shall occur within the buffer strip, and vegetation shall be left in an undisturbed state, with the exception of minimal clearing and associated site development necessary to accommodate the following, which shall have prior approval of the DRB pursuant to Section 5 of these Regulations.” As Section 3.13(B) is within the 100’ streambank buffer provided by Section 3.13(C), review pursuant to Section 3.13(C) is applicable.
23. Section 3.13(C) states, “Any development within 100’ from the banks of streams and rivers, and the shores of ponds, must go through Conditional Use Review. The width shall be measured from the top of the stream bank or stream slope. The DRB may approve such development after a determination that the proposed modification meets the following standards: “1) Reasonable measures are undertaken to protect water quality, such as, but not limited to, the planting of shade trees adjacent to stream banks, the protection of existing or establishment of new vegetated buffer areas along stream banks, and/or stormwater management provisions to collect and disperse stormwater away from the stream or river;” “2) The development will not result in degradation of adjacent surface waters. Specifically, the Board shall find the proposed development will not adversely affect: the ability of the stream to carry floodwaters, stream channel stability, the water quality of the stream due to potential erosion and runoff or, the natural beauty of the stream.”
24. The proposed building envelope is 50’ from the top of the stream bank. The proposed limits of disturbance encroach upon the 50’ stream buffer. The geometry of the lot and abutting streams do not provide sufficient area for a house to be located 100 feet from the top of stream bank.
25. The DRB expressed concerns over the stream channel stability. The location and direction of the streams on the property proposes a risk to abutting landowners, as increased erosion from this property would migrate to and harm them.
26. The DRB expressed concerns over the stream channel stability. The location and direction of the stream on the property proposes a risk to abutting landowners, as increased erosion from this property would migrate to them. The proposed location of the wastewater system places it in an area at risk of stream migration.
27. The applicant has proposed measures to preserve water quality. However, they did not address the ability of the stream to carry floodwaters, the stream channel stability, or preserving the natural beauty of the stream.

28. Section 5.4(A), General Review Standards, states that “conditional use approval shall be granted by the DRB upon finding that the proposed development shall not result in an undue adverse effect” on items including Bylaws in effect, siting and dimensional standards, access & circulation standards and stormwater management & erosion control standards. This evaluation is conducted using Figure 5.1, a test used by the DRB whether or not an undue adverse effect is being created.

1. Does the project have an unfavorable impact upon the resource, issue and/or facility in question?

- **3.4(C)(2) Preserve Natural Areas:** *Yes. The proposed limit of earth disturbance for this project is approximately 5,000 square feet. The DRB does not believe that it would be reasonable to expect zero disturbance to the areas beyond the limits of disturbance given the small size of the parcel and land proposed for development, and that would have an unfavorable impact upon forested land located in the 50-foot stream buffer. The buffer area is currently forested, and the proposed development would remove trees within the 50-foot buffer on steep slopes. The DRB concludes that this project conforms to this standard and has an adverse impact on Natural Areas, including the forested stream buffer.*
- **3.4(E)(3) Steep Slopes:** *Yes, more than half of the earth disturbance envelope is on land with a grade higher than 15%, with areas on land with a grade over 25%. The unfavorable impact is the disturbance in these sensitive areas.*
- **3.13(B) Development Within the Buffer Strip:** *Yes, the regulations are clear to maintain a 50-foot undisturbed buffer from the banks of streams. This waiver is necessary to build on this lot, including the wastewater and potable water systems, and so conflicts directly with this section.*
- **3.13(C) Development Outside the Buffer Strip:** *Yes, the regulations are clear to maintain a 100-foot buffer from the banks of streams. This waiver is necessary to build on this lot and so conflicts directly with this section.*

2. If it has been determined by the DRB that an adverse effect is being created by a project, the DRB shall then determine if the adverse effect is undue. To determine whether or not an adverse effect is undue, the DRB shall respond to the following two questions:

- a. Does the project conflict with a clear, written standard in these Regulations or the Municipal Plan applicable to the resource, issue or facility in question?
- **3.4(C)(2) Preserve Natural Areas:** *Yes. The project would include development within 50 feet of two streams, which is prohibited, and which is a natural resource that has been identified as a priority for preservation. One of these streams (the one forming the eastern property line) has*

migrated in the past. The perched location of the wastewater system places it at risk with respect to the larger stream that abuts the southern property line should it migrate..

- **3.4(E)(3) Steep Slopes:** *Yes, this proposed disturbance envelope includes a large percentage of the disturbed area over 15% slopes as well as disturbances to slopes over 25%. These conditions are unfavorable without any mitigating steps (such as increasing setback distances to streambanks) to the impact suggested.*
 - **3.13(B) Development Within the Buffer Strip:** *Yes, the regulations are clear to maintain a 50-foot undisturbed buffer from the banks of streams. This waiver is necessary to build on this lot, including the wastewater and potable water systems, and so conflicts directly with this section.*
 - **3.13(C) Development Outside the Buffer Strip:** *Yes, the regulations are clear to maintain a 100' buffer from the banks of streams. This waiver is necessary to build on this lot and so conflicts directly with this section.*
- b. Can the unfavorable impact be avoided through site or design modifications, on mitigation, or other conditions of approval?
- **3.4(C)(2) Preserve Natural Areas:** *No, as the applicant's consultant has stated that the proposed project represents the best solution for the development of the lot, which includes impacts to areas within 100 feet of two stream buffers.*
 - **3.4(E)(3) Steep Slopes:** *No, steep slopes cannot be avoided as the development site cannot be modified to reasonably be developed on less steep slopes. No more moderate slopes are available.*
 - **3.13(B) Development Within the Buffer Strip:** *No, due to the location of the streams, size and dimensions of this parcel, there is not sufficient space to locate a building, including its associated area disturbance, wastewater system, and potable water system, while maintaining a 50-foot undisturbed buffer from the banks of streams.*
 - **3.13(C) Development Outside the Buffer Strip:** *No, due to the location of the streams, size and dimensions of this parcel, there is not sufficient space to locate a building envelope completely outside the 100-foot buffer strip.*

The DRB shall conclude that adverse effect is "undue" if the answer to 2(a) is YES OR the answer to 2(b) is NO

The DRB concludes that for all three areas of concern the adverse effect is undue. Based on the testimony of the applicant's consultant, a site visit, and a review of the materials, there are no generally available mitigating steps that can be taken to avoid undue adverse effects on the steep slopes, streams, or front setback.

Decision:

DRB members voted unanimously to **deny** Conditional Use application #3723.

Ky Koitzsch: yes/**NO**/abstain/absent/recusal

Michael Quenneville: yes/**NO**/abstain/absent/recusal

Peter Ludlow: yes/**NO**/abstain/absent/recusal

Daniel Young: yes/**NO**/abstain/absent/recusal

Dated at Fayston, Vermont, this 17th day of August 2022.



Daniel N. Young, 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.