

Development Review Board, Town of Fayston, VT
Notice of Decision for Application No. 3750

Applicant: Joshua and Danielle Livingston

Landowners: Joshua and Danielle Livingston

Parcel ID: 06-060.001

Reason for Application: Minor Subdivision - Requesting approval under Articles 6- 7 of the Fayston Land Use Regulations for a minor subdivision of one 15.4-acre lot into three lots of 5.1 acres, 7.6 acres and 2.7 acres

Public Hearing Attendees: Attending DRB members: Shane Mullen, Daniel Young, Mike Quenneville, Ky Koitzsch, Pete Ludlow and Jim Donkersloot. Minutes Taker: Betsy Carter. Zoning Administrator Jason Wilson. Public: Greg & Sandy Owens, George Guzzi, Brooke Dingleline, 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

Introduction and Procedural History:

1. The Subdivision application #3750 was filed on June 25, 2022. The subject parcel is Parcel ID# 06-060.001, located at 246 Phen Basin Road. Applicants Joshua and Danielle Livingston are requesting approval under Articles 6 and 7 of the Fayston Land Use Regulations for a Minor Subdivision. A copy of the application and supporting paperwork are available at the Fayston, VT town offices.
2. The applicants had a Sketch Plan Review at the August 2, 2022 DRB meeting.
3. Notice of the hearing was properly published. On August 18, 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.
4. Abutters to the property were properly notified of the hearing.
5. The application and plans were considered by the Development Review Board at a public hearing which occurred on September 6, 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:

- A. Subdivision application 3750 including a cover letter, list of abutting land owners, a sample abutting land owner letter and copies of the letters to abutters

- B. A waiver request dated August 22, 2022 from the Livingston's attorney L. Brooke Dingleline.
- C. A signed affidavit titled Affidavit of Danielle Livingston, dated August 23, 2022
- D. State of Vermont Wastewater System and Potable Water Supply Permit #WW-5-8946
- E. State of Vermont Wastewater System and Potable Water Supply Innovative and Alternative (I/A) Technology General Use Approval Permit #2004-02-R9
- F. A site plan titled, "A Subdivision Survey in Fayston, Vermont for Danielle & Josh Livingston" by American Survey Company, dated June 24, 2022,
- G. A site plan titled, "Danielle & Josh Livingston" by American Consulting Engineers and Surveyors, dated June 24, 2022
- H. A three-sheet site plan focused on Lot 1 titled, "Danielle & Josh Livingston" by American Consulting Engineers and Surveyors, dated June 24, 2022

Findings:

1. The property located at 246 Phen Basin Road consists of 15.4 acres. The property is owned by The Joshua and Danielle Livingston.
2. The parcels are located in the Rural Residential District.
3. Parcel 06-060.001 is subject to the following permits: #761, #761-01, #861, #2284, #3198, #3488,
4. These parcels are adjacent to land owned by James & Tina Darrow, Rudolf & Anna Marie Skalka, Joseph & Regina Gil, Patrick Livingston, George & Trudy Mazin and Tina & Manni Mosko c/o Breacher Investment
5. Pursuant to Section 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.
6. Pursuant to Section 7.1 (B)(1) Minor Subdivisions 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.
7. Pursuant to Section 6.7 (E) In the event that the applicant is proposing the creation of a lot(s) not requiring water or wastewater systems, the DRB may waive the provisions of

these regulations pertaining to water and wastewater disposal, providing that the plat recorded with the Town Clerk clearly indicates that the intended use of the lot(s) will not require water or wastewater disposal systems, and the applicant submits an affidavit to the DRB stating his/her intent that will be incorporated as a condition of subdivision approval.

8. Pursuant to Section 6.1 (B), The DRB may waive or vary subdivision review standards, subject to appropriate conditions, in accordance with Section 7.1(E). Any request for a waiver shall be submitted in writing by the applicant at the time of application. In granting such waivers, the DRB shall require such conditions that will, in its judgment, substantially secure the objectives of any waived or varied requirements. Development standards of the Flood Hazard Regulations may not be waived.
9. Pursuant to Section 7.1 (E) The DRB may waive or vary one or more of the following, subject to appropriate conditions: application requirements; preliminary plat review and preliminary public hearing requirements for major subdivisions; and subdivision review standards set forth in Article 6. The request for a waiver shall be submitted in writing by the applicant with the subdivision application, and it shall be the responsibility of the applicant to provide sufficient information to justify the waiver and to enable the DRB to reach a decision. In granting such waivers, the DRB shall require such conditions as will in its judgment secure substantially the objectives of any waived or varied requirements of these regulations. No requirements or review standards of the Flood Hazard Regulations may be waived.
10. The proposed lots meet the applicable lot size and for the Rural Residential District.
11. Applicants state that the intent of this application is to facilitate the sale of Lot 1, which proposes a new water supply and wastewater disposal system for a larger house than currently exists. Lots 2 and 3 are desired to be subdivided without water supply or wastewater disposal systems designed. Applicants stated that they have no intent on developing these parcels at this time.

Decision:

DRB members voted as follows to approve subdivision application #3750 with the following conditions:

1. This application does not approve any development of Lot 2 or Lot 3 at this time. Any development of these lots shall require review and approval of the DRB.
2. Deeds for Lots 2 and 3 shall include a statement that “no building envelope, wastewater system nor potable water supply has been designed for this lot. Additional review and approval of the DRB is required prior to development.”
3. The recordable mylar for this subdivision shall include the following statement: “Lots 2 and 3 of this subdivision have no potable water supply or wastewater disposal system

design. Additional review and approval by the DRB is required prior to development of these lots.”

4. Obtain and follow all State and Federal permits. Copies of these permits shall be submitted to the Town of Fayston. Copies of any drawings that supersede the design shown on the materials presented to the DRB shall be submitted to the Town of Fayston.
5. Submit to the Town Clerk the required mylar plat for recording within 180 days of the date of this decision.

Ky Koitzsch: **YES**/no/abstain/absent/recuse

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

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

Mike Quenneville: **YES** no/abstain/absent/recuse

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

Dated at Fayston, Vermont, this 9th day of October, 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.