

Town of Fayston, Vermont
Development Review Board

Tuesday December 5th, 2023, at 6:00 PM

In-person at 866 North Fayston Road and Via Zoom

DRB: Shane Mullen (Shane) (Chair), Pete Ludlow (Pete), Daniel Young (Dan), Mike Quenneville (Mike), Ky Koitzsch (Ky), Jim Donkersloot (Jim) (alternate)

Zoning Administrator: Jason Wilson

Minutes Administrator: Eve Silverman

Public: Gene Scaperotta, Brian Degen, Don and Dinah Simonini, Jeff and Ruth Halpin, George McCain, Bill Jefferys (Zoom), Doug and Sue Day (Zoom), Patrick Brophy, Diane and Robert Schellack (Zoom)

1. **Meeting called to order by Shane at 6:00 pm**

2. **Agenda Modifications & Announcements.** No modifications.

3. **Approval of 11-7-23 minutes.** Shane noted an edit in the interested parties section of the minutes. *Pete moved to approve the minutes with the corrected edit; Dan seconded. All in favor, none opposed. Motion carried; minutes approved with edit noted.*

4. **Identification and Acknowledgement of Interested Parties of Today’s Hearings**

Simonini Hearing:

Bill Jefferys noted that he lives on Strong Road as an abutter and has concerns that any development will produce visible structures from his parcel. *Mike moved to make Bill Jefferys an interested party to the Simonini application, Dan seconded, All in favor, none opposed. Motion carried.*

Doug and Sue Day live on Deer Run Lane and are abutters to the proposed subdivision. *Ky moved to make Doug and Sue Day an interested party to the Simonini application, Mike seconded, All in favor, none opposed. Motion carried.*

Patrick Brophy lives on Strong Road and is an abutter. *Pete moved to make Patrick Brophy an interested party to the Simonini application, Dan seconded, All in favor, none opposed. Motion carried.*

Brian and Jen Degen live on Deer Run Land and are abutters. *Mike moved to make Brian and Jen Degen an interested party to the Simonini application, Dan seconded, All in favor, none opposed. Motion carried.*

Gene Scaperotta and Eve Silverman own property in close proximity to the proposed development. *Pete moved to make Gene Scaperotta and Eve Silverman an interested party to the Simonini application, Ky seconded, All in favor, none opposed. Motion carried.*

Halpin Hearing:

Gene Scaperotta and Eve Silverman live in close proximity to the proposed development. *Pete moved to make Gene Scaperotta and Eve Silverman an interested party to the Halpin application, Ky seconded, All in favor, none opposed. Motion carried.*

Mike moved to make Diane and Robert Schellack an interested party to the Halpin application; Pete seconded, All in favor, none opposed. Motion carried.

The oath was administered by Shane to all interested parties.

5. Application #3850 Simonini Subdivision

Applicant: Donald & Dinah Simonini

Type of Hearing: Requesting approval under Article 6 & 7 of the Fayston Land Use Regulations for a minor subdivision of 21.09+/- acres to a 10.05+/- acre lot, a 3.76+/- acre lot, 4.24 and 3.05+/- acre lot.

Parcel ID: 03-135

Location of Property: 414 Deer Run Lane, Fayston

George McCain presented on behalf of Don and Dinah Simonini: The proposed is a 4-lot subdivision, the existing house is on lot 1; there are three additional lots with no development proposed at this time. We are requesting a waiver to defer all permits associated with development, as the hope is to convey the lots to adjoining lot owners (as buffer lots) or to conservation companies. Deeds will include deferral language related to State and Town requirements. If development is ultimately proposed, the developers will have to come back to DRB to address any requirements and may involve reconfiguring the properties. Don Simonini: Since the land was purchased in 1972 there have been four homes built plus one under construction. Currently, the land is used for trails by neighbors. We are concerned about the future of land and are looking at ways to conserve it in perpetuity; to do this we need to show boundaries. We have signed an affidavit that we cannot develop land without coming back to the town (and the state) first.

Shane: Looking at prior approvals, there was a statement by the applicant on the 2006 subdivision which cites covenants that restrict further subdivision of the new lots. George: the covenants don't apply to the Simonini lot, only to the new lots that were created in that subdivision. Don: Some of the other lots on Deer Run (pre- 2006 subdivision) also were not restricted by covenants and can (and were in fact, by Degens already) subdivided. The 23 acres we are proposing to subdivide do not have covenants on them.

Shane: Since you want to conserve the land, why not just declare no development now rather than deferring? Don: We are hopeful that we'll get financial compensation for conservation but we can't

be sure, and since we may need funds for retirement, if we can't get compensation for conservation, we have to reserve the right to sell for development. Shane: Without a commitment that they will be conserved we need to consider this subdivision as though they will be developed. George: Wouldn't we be allowed to create a raw land lot with an intended use as an undeveloped lot, and a sale would have the understanding that additional steps would need to be taken before it would be developed? Shane: Per land use regs 6.2A, these lots as configured must be buildable without a commitment that it will be conserved. Don: We signed an affidavit that said that we agree to come back if development were to take place.

Ky: Why break it up as you did? Who would purchase conservation land in the middle of a neighborhood? Don: We have conservation buyers who are interested. Jim: Have you spoken to neighbors about purchasing this land? Don: Yes, but I won't disclose names.

Dan: We may have done this before (deferred lots), there may be a precedent, but this is a different character of land than that one. The rules don't specifically allow this (there are other towns that do allow this).

Mike: Wouldn't you need to get an ACT 250 amendment? George: Yes, but we need this done first so we have something we can go to ACT 250 with. Ky: There is no subdivision allowed under the existing ACT 250 permit. If the Simoninis don't get approval from ACT 250, then any Town approvals would be invalid.

Bill Jefferys: This is encouraging. We have conserved our land with the Vermont Land Trust for a nice tax deduction. Have u considered VLT? I would be willing to make a contribution to VLT to encourage the conservation of Don's land. Don: I did pursue this avenue, but they prefer very large parcels. Bill: Who else are you talking to? Don: I've had to take a break from talking to anyone else until I find out where this subdivision stands.

Doug Day: We are happy to hear about conservation, but we are concerned about wildlife corridors should the land be developed. Sue Day: I am concerned about the possibility of development. We are at the dead end of the road; the new house going up has already increased the traffic on the road. We are concerned about egress on the narrow road, we had to park on our neighbor's property and cross through their property to get to our house when a large truck was blocking access on Deer Run Lane. My husband volunteers for MRVAS, I'm concerned about the hazards of him getting out. I'm also concerned about erosion which has already been a problem.

Patrick Brophy: How do we help to permit them to conserve? Shane: The DRB makes decisions based on the information we get, we are not consultants to help them through the process.

Brian Degen: We hope the land can be conserved, and we share the Days' concern about further development. Why do the conservation companies need anything more than your sketch to go forward with conversations about potential sales? Don: It is possible to do that...but it's very important to me to preserve our low-rate mortgage. We need town-approved meets and bounds on our own 10-acre parcel in order for the mortgage company to transfer the lien.

Ky: How do you know the state would approve the lots as building lots? George: We don't. Ky: Would the state approve them as deferred lots? George: Yes. Shane: You're speaking about the wastewater permit program, ACT 250 doesn't recognize deferred lots, correct? George: Correct.

Brian: When we purchased our property 25 years ago, which abuts proposed Lot 3, there was a letter from Don which said there would never be more than five lots. Several years later, there were additional lots subdivided. We would not be happy with further development, especially on the proposed Lot 3. We are concerned that this is step one toward the eventual sale and development of this land. The letter, which was written in 1986, states that there would be limited development of this property. Dan: Was the letter written into the permit that was issued by ACT 250? Brian: This letter influenced our decision to purchase this property; we were expecting to live in a place with only a few lots around us, then a number of years later there were additional lots developed. We have been through many years of construction.

Gene Scaperotta: When the three lots were developed, there were environmental impact concerns about the waterways. I can see the roof of the new house from my property; I'm concerned about additional houses that might go up. Eve Silverman: Why does the area need to be subdivided to be proposed for conservation? Wouldn't the entire 21 acres (or the balance of the land less Don's house) be more valuable to a potential conservation buyer than smaller three or four acre lots? The size of the lots proposed suggests that development is the intention.

Shane: Looking at the previous plans that were submitted for ACT 250/stormwater. The entire area to the east of Deer Run Lane is subject to a "not to be disturbed" restriction. This hatching extends northward, there is significant land not to be disturbed. In addition, there is correspondence from Fish and Wildlife that identifies this area as potential deer corridors and should be conserved. There were stream setbacks identified; if developed there would be several restrictions on where the land could be developed.

Shane: You don't need to come back to DRB before selling to a conservation buyer. You would only would need to come back if something was changing. Don: Before I would sell to conservation buyer, I would put in language that would ensure that the conservation would be held in perpetuity.

Shane: There is another regulation, 6.2H. When an applicant submits a plan for development, the DRB may require a general indication of the remaining portion of the land. Since there is no waiver of the ability to develop in the future, it is hard to figure out how to move forward because the subsequent plan is not clear. George: Could we create "undeveloped lots"? The intent is that they should not be developed, but that doesn't mean that you could never develop them if we came back and jumped through the necessary hoops. Also, according to section 6.1B, DRB may waive or vary subdivision review standards. We have submitted the affidavit; it doesn't seem fair to limit the intent forever if our current plan to conserve falls through.

Jeff Halpin: What is the wording on their application? Ky read the application, that intent is the subdivision is being made to facilitate conveyance to the adjoining owners. Jeff: It seems that there

are a lot of safeties built into this application. I think that the best way to prevent someone developing is to buy the property to be developed. Brian: We bought our land thinking that there could never be development beyond a certain amount, we shouldn't have to buy the land. George: The letter may be related to the ACT 250, but I don't believe town approvals limit further subdivisions.

Ky: Is there any interest from the neighbors to buy these lots? Don: I don't know, I have stopped pursuing anyone. To me they wouldn't be valuable to any development buyers without permits in place. Why would anyone buy a deferred lot without knowing it was buildable? Shane: In the real world, you can't assume that. We can't make a decision based on that assumption. George: Their intended use is undeveloped, for now. It would be sold under this use if it is sold.

Gene: If I bought one of these lots to build on and it is not buildable as is, would I need lot line adjustments/redo the whole subdivision? Shane: Yes, there might be lots of work to readjust the lot lines with a joint application from all relevant owners.

Shane: We don't have deferral language specifically. Section 6.7 states we may waive certain requirements, but we are not required to do this. We need to judge every application on its own merits.

Shane: The applicant had requested a waiver of the typical two-step process; combining the sketch and final plan. Do we feel the application is complete/can we close the hearing with plat combined or should be considered as a sketch? All on Board: We should close it. Shane: I do think there could be more language that would help me come to a better decision. George: Would you like deferral language on the plat? Shane: Yes.

Pete: Why create these smaller lots, why not put it all in one? Don: I had engineers in the field, we just "added the line in" since there seemed to be two good sites there. Pete: This conveys an intention of subdividing the buffer zone. Shane: Have there been pins set out there? George: Not yet.

Motion was made by Mike to grant application to waive two-step process and consider this a sketch and final plan and was seconded by Pete. All in favor, none opposed, motion carried. Application was found to be complete.

Motion was made by Pete to grant waiver of showing development envelope on the plan. Dan seconded, all in favor, none opposed; motion carried.

Motion was made by Pete to close this agenda item. Ky seconded, all in favor, none opposed; motion carried.

6. Applications #3851 & 3852 Halpin Subdivision & Conditional Use approval.

Applicant: Jeffrey & Ruth Halpin

Type of Hearing: Requesting approval under Article 6 & 7 of the Fayston Land Use Regulations for a minor subdivision of 46.2+/- acres. Along with a Boundary Line Adjustment with parcel 03-020-001 to create three lots of 45.3+/- acre lot, 1.2+/- acre lot and 2.5+/- acre lot.

Requesting a Conditional Use Permit per Section 3.4 of the Fayston Land Use Regulations for development on slopes in excess of 15% in grade.

Mike made a motion to find the application complete, Dan seconded. All in favor, none opposed. Motion carried.

George: The Halpins are proposing a boundary line adjustment, subdivision, and a building envelope for a new single-family residence. They currently own 2.5 acres (Lot 3), they bought the adjacent approximately 50-acre parcel (undeveloped). Now we are proposing a boundary line adjustment between these two lots to provide for the appropriate setbacks for the proposed house on Lot 2. The undeveloped Lot 4 will be the remainder of the land post-subdivision. Access to Lot 2 will be from the existing curb cut, modified to meet driveway and curb cut standards. No changes to driveway/access for existing house. Access to Lot 4 will be through the right of way on the existing house property. Water/wastewater for proposed house: the lot was previously approved for two residences to connect to the existing leach field. (The prior house site is not developable; capacity was never developed for existing leach field.) There will be a newly proposed drilled well on Lot 2. Some steep slopes, erosion control measures are shown.

Ky: Are we reviewing lot line adjustment only or steep slopes? George: Yes, there are some areas of 15% so that should be included. Also, we are looking for approval on the driveway.

Shane: How is stormwater flowing, especially on west side of Lot 2? George: There is a ditch not on the plan plus an existing ditch. There is a network of swales, we will divert around the house site. There is also an existing culvert at the Woods Road. Shane: This parcel has been looked at before and stormwater management was a concern; swales need to be large enough and in good enough condition to accommodate additional development, with erosion control measures.

Ky: Where does the water go when it hits the road; are neighbors across street still concerned? Jeff Halpin: They were but they no longer have as much concern.

Shane: What are your plans for Lot 4? Jeff: I don't want to commit that I'd never develop it, but for now I'd like to keep it wooded for sugaring.

Diane and Robert Schellack: We want to ensure there is no impact on our stormwater permit. George: there will be no impact whatsoever.

Shane: What about power? George: there's a power pole between the existing and proposed property lines with underground up the hill.

Ky made a motion to consider the application combined single sketch/final; Dan seconded, all in favor, none opposed. Motion carried.

Jeff: I want to withdraw an existing building application for a garage/shop. Jason: You could send it to me in writing or let it expire.

Pete made a motion to close this agenda item, Dan seconded. All in favor, none opposed; motion carried.