

**Development Review Board, Town of Fayston, VT**  
**Notice of Decision for Applications No. 3850**

**Property Owner & Applicant:** Donald & Dinah Simonini

**Parcel ID:** #03-135

**Application Numbers:** 3850

**Reason for Application:** Request for a 4-lot subdivision.

**Public Hearing Attendees:** Shane Mullen (Chair), Mike Quenneville, Pete Ludlow, Dan Young, Ky Koitzsch and Jim Donkersloot (Alternate) **ZA:** Jason Wilson; **Minutes Taker:** 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)

**Introduction and Procedural History:**

1. The subdivision application was filed on November 7, 2023. The subject parcel is Parcel ID # 03-125, located at 414 Deer Run Lane. Applicants Donald & Dinah Simonini are requesting approval under Articles 6 of the Fayston Land Use Regulations for a four lot subdivision.
2. A copy of both applications and supporting materials are available at the Fayston, Vermont Town offices.
3. Notice of the hearing was properly published. On November 16, 2023, 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 December 5, 2023. The Development Review Board reviewed the application and plans under the Town of Fayston, VT Land Use Regulations, as amended May 2023.
6. The following were approved by the DRB as interested parties to these applications:
  1. Bill Jeffreys
  2. Doug & Sue Day
  3. Patrick Brophy
  4. Brian Degen
  5. Gene Scaperotta

**The following exhibits were submitted to the Development Review Board:**

- A. Subdivision Application #3850 including a cover letter, list of abutting land owners, and a sample abutting landowner letter.
- B. Letter from Don & Dinah Simonini to Town of Fayston Zoning Administrator dated November 20, 2023 requesting waivers and describing project intent (“water and wastewater waiver affidavit”).
- C. A site plan titled “Site Plan – Donald & Dinah Simonini, Four-Lot Subdivision” by McCain Consulting; Inc. sheet C-1, dated November 3, 2023, last revised November 15, 2023.
- D. A letter from McCain Consulting dated November 20, 2023 detailing the applicant’s request for waivers.
- E. A Vermont Agency of Natural Resources Atlas map of the project vicinity.
- F. Scans of certified receipts of abutter notice.

**Findings of Fact:**

- 1. The properties are located at 414 Deer Run Lane and consists of 21.09 acres. The properties are owned by Donald & Dinah Simonini. The parcel is identified as 03-135 in the Rural Residential District.
- 2. Parcel #03-0315 is subject to the following permits:
  - 203 Building (1977)
  - 203-01 Health (1977)
  - 1552 Certificate of Occupancy (1997)
  - 2778 Subdivision (2007)
  - 2869 Building (2007)
  - 2896 Subdivision (2007)
  - 3019 Subdivision (2009)
- 3. The Property is adjacent to land owned by Benjamin Rinzler, Douglas & Susan Day, Brian & Jennifer Degen, Edmund Polubinski Revocable Trust, Kapp LLC, Patricia Krcmar, Shane Flannelly-King, Phillips Doherty Trust U/T/A, William & Susan Jefferys, Patrick Brophy & Susannah Cowden and Seth Cohen & Tara Marie Nucera.
- 4. Parcel is subject to Act 250 permit series 5W0491.
- 5. Parcel is subject to VT DEC Stormwater permit 4833-9015.

6. Applicants seek approval for a subdivision of 21.09 acres into four lots: 10.05 acres (Lot 1 - existing house), 3.76 acres (Lot 2), 4.24 acres (Lot 3), and 3.05 acres (Lot 4).
7. Applicants seek waiver of the development envelope requirement.
8. Applicants seek waiver to address sketch plan and final plat in a single hearing.
9. Applicants' affidavit states that deeds for the proposed lots will have language stating that "no development can take place...prior to obtaining the appropriate permits".
10. No development is shown on the sketch plan; Applicants stated no development is proposed at this time and that they will obtain a deferral of permit from the VT DEC to inform future purchasers that additional wastewater permitting is required prior to development.
11. The applicants had a Sketch Plan Review at the December 5, 2023 DRB meeting.
12. Pursuant to Section 7.1 (B) (1), a minor subdivision "results in the creation of five or fewer lots, regardless of any change in ownership."
13. The proposed lots meet the applicable lot size for its zoning district.
14. A "no cut" zone illustrated on a site plan titled "Donald F. Simonini, 4-Lot Subdivision – Stormwater Plan" by Dufresne & Associates, PC Wayne D. Lawrence Division Consulting Engineers & Surveyors last revised 12/15/06 encompasses most of the area of Lot 4 that is not subject to a stream setback.
15. A letter from Julia S. Moore, Regulatory Policy Analyst of the ANR Division of Regulatory Management and Act 250 Review dated 3/12/07 states that this parcel has established an "undisturbed, naturally vegetated riparian buffer on the [two] unnamed tributaries to the Mad River measuring a minimum of 50-feet from top of slope" and "any disturbance or encroachment on the riparian buffers...other than the two stream crossings specifically identified in the project plans, is strictly prohibited."
16. A letter from Timothy Appleton, Fish & Wildlife Specialist of the VT DEC stated that "much of Lots 1 & 2 were formerly open areas that have reverted to forested cover" and that "[t]he hemlock areas associated with the stream drainages should be left alone in order to protect the streams as well as to protect the best examples of dense coniferous tree cover found on the property for the benefit of deer.
17. Applicants' water and wastewater waiver affidavit states the intent of the project is to create buffer lots to sell to neighbors, or revise the plan and resubmit to the DRB prior to development.
18. Applicant stated in testimony that the intent is to sell these parcels to a conservation group, but did not provide any written correspondence or divulge any individuals or organizations who were being consulted.
19. Applicants wish to reserve the right to develop these lots.

20. Interested parties Patrick Brophy, Doug & Sue Day indicated that they would be supportive of a project that would result in land conservation, but would not be supportive of a project that results in additional residences being constructed.
21. Interested party Brian Degan stated that there was a letter that was written by Mr. Simonini stating there would be no further subdivision of the parcels. Dated 11/25/86, it states the “original...Act 250 permit was set up to allow us the building of the 1300-foot road with a maximum of 5 house sites on the property in the future.
22. The DRB approved the Applicants’ request to combine sketch and final plat review into a single hearing on a 4-to-1 vote.

**Decision:**

The DRB makes the following findings:

1. Claims of this subdivision being a conservation project cannot be evaluated as no written evidence or spoken testimony was offered describing the details or the organizations being contacted.
2. Applicant does not guarantee that this subdivision will not result in any development, and therefore must be evaluated as having future development.
3. Several adjoining landowners stated that if the area was developed with additional residences, it would have an undue adverse impact to their properties including impacts to scenic views and roadway suitability.
4. Lot 4 as drawn is undevelopable due to prior land use permitting restrictions.
5. Stream setbacks on Lot 2 limits the potential area for development.
6. Notwithstanding the applicants’ representation that the subdivision will be used for a “conservation project”, evidence in the record indicates that the applicants intend to subdivide the property for residential purposes.
7. Per Section 6.2(A), “all land to be subdivided shall be of such a character that it can be used for its intended purpose(s).” Applicants have not proven the lots are buildable with the evidence presented, and the DRB cannot determine whether it can be “used...without danger to public health and safety, the environment, neighboring properties, or the rural character and natural beauty of the community.” The requirements of this section have not been met.
8. Per Section 6.2(E), “the DRB shall require development envelopes to identify and limit the location of...site development”. No development envelopes or building footprints have been provided by the applicants. The requirements of this section have not been met.
9. Per Section 6.2(G), “subdivisions shall use the least amount of area for roadways and the least length of sewer, water and utility lines within environmentally and economically sound limits.” Information on roads and utilities have not been provided by the applicants. The requirements of this section have not been met.

DRB members voted as follows to approve subdivision application #3850:

Shane Mullen: yes/**NO**/abstain/absent/recuse

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

Pete Ludlow: yes/**NO**/abstain/absent/recuse

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

Mike Quenneville: yes/**NO**/abstain/absent/recuse

**Dated at Fayston, Vermont, this 18<sup>th</sup> day of January, 2024.**

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**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.