

Development Review Board, Town of Fayston, VT
Notice of Decision for Application No. 3518-3519

Applicant(s): Charlotte Potter Kasic & Patrick Kasic

Landowner(s): Richard & Margaret Potter

Parcel ID: #04-020.000

Reason for Application: Minor Subdivision & Development on Steep Slopes

Public Hearing Attendees: 4/9/2019 - Attending DRB Members: Jon Shea (Chair), Shane Mullen (Vice-Chair), Jared Alvord, Lindsay Browning, and Mike Quenneville; ZA: John Weir; Public: Colin Lindberg, David Frothingham, Gunner McCain, Susan Snider, Patrik Kasic, Charlotte Potter-Kasic, Sparky Potter, Sheila Getzinger; 5-14-2019 - Attending DRB Members: Shane Mullen (Vice-Chair), Jared Alvord, Lindsay Browning, Mike Quenneville, and Ky Koitzsch; ZA: John Weir; Public: David Frothingham, Gunner McCain, Patrik Kasic, Charlotte Potter-Kasic, Peggy Potter, Lisa Williams, Todd Hill, Allison Johnson

Introduction and Procedural History:

1. The Development Review Board application was filed on March 19, 2019. Applicants Patrik Kasic and Charlotte Potter-Kasic request approval under Article 7 of the Fayston Land Use Regulations for a lot-line adjustment (minor subdivision) (#3518). Applicants also request conditional use approval under Section 3.4 (C) (1) (d) of the Fayston Land Use Regulations for development on slopes between 15% - 25% in grade (house site) and slopes greater than 25% in grade (driveway) (#3519). A copy of the application and supporting paperwork are available at the Fayston, VT town offices.
2. Notice of the hearing was properly published. On March 21, 2019 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.
3. Abutters to the property were properly notified of the hearing.
4. The application and plans were considered by the Development Review Board at public hearings which occurred on April 9, 2019 and May 14, 2019. The Development Review Board reviewed the application and plans under the Town of Fayston, VT Land Use Regulations, as amended June, 2018.
5. Per applicant's request in writing, preliminary sketch plan review was waived.
6. A site visit was conducted on April 24, 2019.

The following exhibits were submitted to the Development Review Board:

Exhibit A. Subdivision application #3518

Exhibit B. Conditional Use application #3519

Exhibit C. Letter to adjoining landowners with project description

Exhibit D. Warning placed in the Valley Reporter on March 21, 2019. This warning was also posted at the Fayston municipal offices, as well as at both the Moretown and Waitsfield post offices.

Exhibit E. Preliminary Site Plan, Sheets C-1, C-3, C-4 (dated February 18, 2019)

Exhibit F. Slope Analysis ANR Map

Exhibit G. Preliminary Survey Sheet 1 of 1 (dated February 2019 (McCain Consulting))

Exhibit H. Email from Jaron Borg, VT Stream Alteration Program dated October 19, 2018.

Exhibit I. Sheet C-1 "Site Plan", Sheet DD-3 "Road and Profile Detail", Sheet DD-4 "Erosion Prevention and Sediment Control Details" (dated March 18, 2019 and March 27, 2019)

Findings:

1. The Board found the application to be complete at a public hearing held April 9, 2019.
2. The Board declared application #3518 one for a minor subdivision at a public hearing held May 14, 2019.
3. The property is located in two districts: 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; and the Soil & Water Conservation 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 2.2 of the Town of Fayston, VT land use regulations
4. The applicant's parcel is adjacent to land owned by Avery Long, Spencer & Stephen Dumas, Peter Forbes and Helen Whybrow, Rick Topper, Lawrence & Barbara Bennett Family Trust, Peter & Patricia Terraciano, Timothy O'Halloran, Judith Dimario, Vermont Land Trust, Richard Avery, and Susan Snider.
5. This project proposes reconfiguration of existing parcels 04-20-c & 04-20-e which are adjoining lots owned by Sparky and Peggy Potter. The 04-20-c parcel will be reconfigured from 41.3 acres to 17.5 acres. The 04-20-e parcel will be reconfigured from 3.7 acres to 27 acres and will be improved with a single-family residence and detached accessory dwelling unit.

6. The project site contains land in both the Rural Residential District and the Soil & Water Conservation District. The proposed lots will meet the dimensional requirements for both Districts, with the exception of frontage requirements.
7. A lot served by a permanent right-of-way may be approved by the DRB under Section 3.1.
8. The project has two building envelopes, one will contain the house, and the other will contain the proposed accessory structure. The proposed apartment is approximately 24% the size of the proposed primary dwelling: 684 square feet for the apartment and 2,840 square feet for the house.
9. The house site is on slopes between 15% - 25% in grade. The proposed primary house is 2,840 square feet in size, 2.5 stories, and a walkout basement. Also proposed is a small detached apartment unit, which would be a one-floor walkout with a flat roof. The unit will be built into the slope.
10. There is an existing woods road that extends out from Judy Dimario's house toward the proposed development area for approximately 900 feet. At the end of the woods road, there will be a cut across the slope to bring the drive up to the proposed house site.
11. The woods road will need to be upgraded, widened and otherwise improved per road standards, as well as extended as a drive. Improvement of the existing woods road will require ditching, stone-lining and grading. Road improvement will result in the disturbance of slopes in excess of 25% in grade. There will be three pull off areas and a turnaround close to the house. The total distance of the driveway is about 1,500 feet.
12. The first section of the driveway has a maximum grade under 15%, with an average grade around 12.5%. There are existing culverts on the lower portion of the drive. Several more culverts will be added on the upper portion, ranging in size as shown in Exhibit I..
13. Jaron Borg, State River Management Engineer, visited the site and delineated one intermittent stream and two ephemeral streams. Jaron concluded no stream alteration permit was necessary.
14. The parking area at the house site will be equivalent in size to the house envelope. Instead, occupants will park at the primary dwelling and walk down to the apartment. The distance from the parking area near the house to the detached apartment is about 150 feet.
15. Abutter Peter Terraciano was deemed an Interested Party. Peter was not present but did provide written testimony over his concerns about his spring being downhill of the proposed project.
16. The state requirement for a setback of a leachfield from a shallow spring is 500 feet. The proposed leachfield for the single family home and accessory dwelling is set back approximately 650 feet from Terraciano's spring.
17. Susan Snider, landowner on Mad Ellen Road, was deemed an Interested Party. Susan is concerned over the lack of a road agreement among the landowners along Mad Ellen Road.

18. There are currently six houses on the road and the road is in drastic need of repairs. There is existing disagreement from landowners as to plowing, sanding and otherwise maintenance of the road. The interested party's concern is heightened with the possible addition of the subject development and the continued failure to have any sort of road agreement or homeowners association.

19. The applicants as well as the current landowners have been actively trying to coordinate a road agreement among the various landowners.

20. The Board understands that it would be improper to fashion an approval upon the creation of a road agreement, as that would potentially allow for a landowner on that road to prevent the subject development by failing to agree.

21. Applicants admitted additional development could occur off the proposed new driveway in the future.

22. As generally agreed upon, Mad Ellen Road ends at Judy Dimario's house, at which point the proposed driveway to the Kasic's begins and proceeds 1,500 feet to the proposed house site. Should additional development occur farther up the driveway, then Mad Ellen Road is effectively extended farther past the Dimario residence.

23. Lot 2 of this subdivision will be deemed a "deferred lot", meaning that development may occur on lot 2, but none is intended at this time. Applicants are amenable to a condition of approval that required a subsequent application to receive conditional use approval before developing the other parcel.

24. Pursuant to Section 3.4 (E) (1) (b) (i), development on steep slopes in excess of 25% in grade is allowed only if it consists of limited site improvements necessary to facilitate development on contiguous land with a slope of less than 25% in grade.

25. Applicant's revised plans (Exhibit I) satisfied the Board, and included: modification of the ditch detail such that it is now a trapezoidal two-foot bottom; additional contour mapping of the entire road/driveway; ditch detailing to 2-on-1; and removal of "preliminary" stamp from plans.

26. The Construction General Permit (CGP) risk analysis for the project was determined to be low-risk by the consultant. The plans as submitted state the project will follow the Low-Risk Site Handbook for Erosion Prevention and Sediment Control (VT Department of Environmental Conservation, August 2006).

27. The Board requires that the proposed road include a depression at the first culvert past Judy Dimario's house so that water does not flow down the wheel tracks.

28. Section 3.4 (E) (3) (g) states: "Cut and fill slopes will be rounded off to eliminate any sharp angles at the tops, bottoms and sides of regarded slopes, and shall not exceed a slope of one vertical to two horizontal (1:2), except where retaining walls, structural stabilization or other accepted engineering methods are proposed. Structures will be set back from the tops and bottoms of such slopes an adequate distance (generally six (6) feet plus one-half the height of the cut or fill) to ensure structural safety in the event of slope collapse."

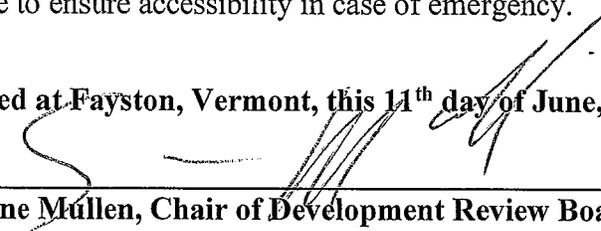
29. Applicant offers armoring as an acceptable alternative for structural stabilization. Specifically, structural stabilization on the 1 vertical to 1 horizontal (1:1) slopes with riprap, noting the contractor can go to a 1:2 slope and provide double-net straw erosion control blankets if so desired.
30. There are proposed three parking spaces, two for the home and one for the accessory dwelling. There is one proposed turnaround.
31. Power can be overhead until the last stream crossing, and then power shall run underground to the house.
32. With regard to monitoring the site during construction, the CGP requires that an onsite coordinator do inspections weekly as well as after a heavy rain event. Applicant's engineer is available to visit the site and ensure the erosion control techniques were operating properly and in accord with the plans as approved.
33. The landowner is required to check on the site during construction to ensure that the proposed erosion control devices are controlling runoff and sediment to protect the Terraciano spring downhill from the project, with assistance from professionals as needed.
34. Legal agreements, including covenants, restrictions etc. have no bearing on DRB proceedings, as those are conducted solely pursuant to the land use regulations.

Decision:

DRB members voted unanimously to approve subdivision application #3518 and conditional use application #3519 with the following conditions:

1. File final mylar within 180 days of the date of this decision.
2. Obtain and follow all State and Federal permits.
3. Follow the B-71 Standards for driveway construction. Driveway shall be designed to meet Detail H of the B-71 Standards (depression 5-inch vertical)
4. Notify the Waitsfield Fire Department after the project is complete so a walk-through can be done to ensure accessibility in case of emergency.

Dated at Fayston, Vermont, this 11th day of June, 2019.



Shane Mullen, Chair of Development Review Board

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.