

TOWN OF POMFRET
ZONING BOARD OF ADJUSTMENT

Minutes of Meeting
February 29, 2024

MEMBERS PRESENT: Benjamin Brickner (Chair), Shaun Pickett, Susan Burgess, Kyle Hansen, Lyndsay Hyde, Seth Westbrook and Jeff White

OTHERS PRESENT: Karen Hewitt Osnoe (Zoning Administrator), Clint Hunt (Applicant), Antoinette Hunt (Applicant), Sarah Yetter (Applicant), Jack Willey, Bailey Markwell, Dana Pape, Emily Grube, Karen Hawkes, Bill Emmons, John Moore, Nicole Green, Mike Green, Timothy Fox, Dave Lewis, Megan Pollack, Amy LeBaron, Pete Landis, Brian Smith, Doug Tuthill, Catherine G., D. Sanford, Kenneth Niemczyk, Lauren Dorsey (The Vermont Standard), Seton McIlroy, Mallory Bennett, Kara Nelson, Sandra Filiault, Lisa Ryan, and "Groups2 @ WWC"

A hearing was held regarding the following application:

Application #ZP23-30 by Abracadabra Coffee Co. for conditional use approval for the Production of Baked Goods, Breakfast and Lunch Service, and the sale of beer, wine, and spirits as well as an allowance of up to 70 combined indoor/outdoor patrons during regular business hours and the allowance of up to 300 patrons per Monthly Special Event on parcel #4802 at 35 Wayside Road.

CALL TO ORDER:

Chair Benjamin Brickner called the meeting to order at 6:00 PM

Mr. Brickner asked if anyone on the Zoning Board of Adjustment wished to disclose any conflicts of interest ex parte communications since the last time the ZBA met in January. No members disclosed a conflict of interest or ex parte communication.

Mr. Brickner then re-opened the hearing on Application #ZP23-30.

HEARING ON APPLICATION #ZP23-30

At the outset, the ZBA afforded any persons that were not at the previous hearing or had requested interested party status by emailed letters, wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to identify themselves. There were no additional ones requesting interested party status. Jack Willey, Antoinette Hunt, Clint Hunt, Sarah Yetter and Bailey Markwell were sworn in.

The subject property is a 2.19± acre parcel located at 35 Wayside Road in the Town of Pomfret (parcel ID #4802).

Materials received since the previous hearing:

- A. Supplemental materials on February 23, 2024, in response to the ZBA's letter requesting the same on January 12, 2024.

- B. About a dozen comments and responses from members of the community.

During the hearing the following testimony was heard:

1. Jack Willey thanked the ZBA for giving them the time to gather the requested additional information and walked the ZBA through the Applicant's supplemental materials.
2. Mr. Willey indicated that a new septic system is expected to be complete in the coming weeks. The new system has a capacity for 70 patrons and 5 employees, hence the request for an increase in capacity to 70 persons during normal business hours.
3. Mr. Willey stated that it would be highly unusual to have 70 patrons at the same time; rather this would be the maximum at any one time.
4. In response to issues raised around parking along Wayside Road and Route 12 during monthly events last year, Mr. Willey stated that Applicant has expanded its existing parking lot to accommodate about 40 vehicles. Applicant also has handshake agreements with two nearby landowners to provide overflow parking off-site during special events. Completion of the new septic system will allow for creation of a smaller parking area on the northwest side of the building for employees.
5. Mr. Willey stated that the Applicant is mindful of ADA compliance and intends to create ADA accessible spots in its parking lot; the building is otherwise ADA accessible and will continue to be when new restrooms are installed following completion of the new septic system.
6. Mr. Willey stated there will be no change in outdoor lighting, consistent with the Town Plan.
7. Mr. Willey stated that the Applicant is currently licensed by the state Department of Health as a mobile food operation, which is limited to preparation and sale of food for takeout. The Applicant intends to be re-licensed as a restaurant, which would allow the Applicant to prepare and serve food for consumption on the premises.^[*]
8. Mr. Willey stated that the Applicant is not aware of any burdens Applicant's current activities have placed on community services or facilities such as schools, emergency services, transit services and road maintenance.
9. Mr. Willey stated that the special events held last year were family oriented, were safe with no safety incidents reported on the property or elsewhere. The Applicant will develop a plan to limit and monitor attendance using such methods as ticketed attendance, hiring parking managers and crowd monitoring monitor.
10. Bailey Markwell disputed the Applicant's characterization of their special events as "peaceful and quiet" indicating these events were audible from her home about 500 feet distant and had created traffic and parking issues at the foot of her driveway.
11. Ms. Markwell also questioned whether the ZBA should entertain the present application

* The Applicant is presently licensed by the state Department of Health as a "Commercial Caterer" as defined in 13-018 Code Vt. R. 13-140-018-X, Section 5-202(4). Restaurants are defined for state licensing purposes in 13-018 Code Vt. R. 13-140-018-X, Section 5-202(1).

at all. She pointed to the limited circumstances described in Section 6.6.4 of the Zoning Ordinance in which permit amendments are appropriate, namely upon changes in factual or regulatory circumstances, changes in the project not reasonably foreseeable by the Applicant, and technological changes, none of which Ms. Markwell contended were present here.

12. In response to a question posed by Mr. Brickner about screening, Mr. Willey stated that visual and aural screening is under consideration.
13. Ms. Hunt indicated that the Applicant's request from Vtrans for business directional signage in both directions on Route 12 is nearly complete and expected to be approved.
14. Ms. Hunt also indicated that consistent with the Applicant's supplemental materials, alcohol service is intended to occur only on weekends.
15. Several commenters raised concerns around the proposed alcohol service, including the potential safety risks. Mr. Willey noted that alcohol had been served without incident at special events last year.

Shaun Pickett moved and Jeff White seconded that the hearing be closed. Unanimous. The hearing was closed at 7:47 pm.

SCHEDULING MATTERS

Karen Osnoe informed the ZBA of two hearings to be scheduled, one for a setback waiver and the other for development in a FEMA special flood hazard area. The ZBA scheduled site visits and hearings for the same on March 27, 2024. Ms. Osnoe will inform abutters and publish the required notices in *The Vermont Standard*.

ADJOURNMENT AND DELIBERATIVE SESSION

Mr. Brickner moved and Mr. Pickett seconded that the meeting be adjourned and the ZBA enter into a deliberative session pursuant to 1 V.S.A. 312(e). Unanimous. The meeting was adjourned and the ZBA entered into a deliberative session at 7:59 pm.

These minutes approved at Pomfret, Vermont, this 27th day of March, 2024.


Benjamin Brickner, Chair