

TOWN OF POMFRET
Zoning Board of Adjustment

Memorandum of Decision

Permit Application: #ZP20-01
Property Address: 2035 Pomfret Road, South Pomfret
Parcel No.: 0121
Parcel Size: 0.66 acres

Property Owner: 2035 Pomfret Road, LLC
c/o Richard Baccari
P.O. Box 1014
Yorktown Heights, New York 10598

Applicant: The Pomfret Road General Store, LLC
2035 Pomfret Road
South Pomfret, Vermont 05067
kd@artistree.org/christeago@gmail.com

I. Procedural History

A. The Current Application

This memorandum of decision (this "Decision") is made by the Zoning Board of Adjustment of the Town of Pomfret (the "ZBA"), in connection with Zoning Permit Application ZP20-01 (the "Application") by The Pomfret Road General Store, LLC, a Vermont limited liability company (the "Applicant").

The Application is dated December 23, 2019 and was received by the Zoning Administrator for the Town of Pomfret (the "ZA") on January 2, 2020. The Application is attached as Exhibit A. The Application and all supporting plans and documents (the "Application Materials") are also on file with the ZA.

All procedural steps leading to this Decision were properly taken. On January 6, 2020, notice of a public hearing was posted at the Town Clerk's Office, North Pomfret Post Office and Teago General Store. On January 9, 2020, notice was published in the *Vermont Standard*. A copy of the notice was mailed by the ZA to the following owners of property abutting the Property: Doris Roberts, Shaun and Pam Pickett, Pomfret-Teago Volunteer Fire Department, Abbott Memorial Library, Purple Crayon Productions, and Pomfret Farm Realty Trust.

On February 10, 2020, notice of a second public hearing was posted at the Town Clerk's Office, North Pomfret Post Office and Teago General Store. On February 13, 2020, notice was published in the *Vermont Standard*. A copy of the notice was mailed by the ZA to the following

owners of property abutting the Property: Doris Roberts, Shaun and Pam Pickett, Pomfret-Teago Volunteer Fire Department, Abbott Memorial Library, Purple Crayon Productions, and Pomfret Farm Realty Trust.

The Application seeks approvals and variances for certain proposed development at the property located at 2035 Pomfret Road and consisting of two lots: (1) the "Teago Lot" containing a mixed use structure (the "Teago Building") and (2) the "Parking Lot" containing a gravel parking area (the "Parking Area" and the two lots collectively, the "Property").

B. The Prior Application

Applicant submitted a substantially similar Zoning Permit Application (#ZP18-23) on October 24, 2018 (the "Prior Application"). Following a hearing of the ZBA held on December 11, 2018, Applicant requested that the Prior Application be withdrawn and the ZBA dismissed without prejudice the Prior Application by a decision dated March 25, 2019. As the ZBA did not reach the merits of the Prior Application, its consideration of the present Application is made de novo.

C. Site Visit and Public Hearings

The Application was considered by the ZBA at a duly warned and noticed first public hearing held on January 28, 2020, at the Pomfret town offices. The first public hearing was preceded by a site visit at the Property. Minutes of the first public hearing were approved February 3, 2020, posted to the Town of Pomfret website, and are incorporated by reference herein.

Following a recess of the first public hearing, the ZBA requested and received additional information from Applicant, including architectural drawings, a revised site plan (the "Revised Site Plan"), and answers to various questions regarding the Application. The Revised Site Plan, entitled "Proposed-Site Plan, Teago General Store, South Pomfret, VT" prepared by Engineering Ventures PC, dated December 16, 2019 and last revised February 5, 2020, is attached as Exhibit B.

The Application was considered further by the ZBA at a duly warned and noticed second public hearing held on March 5, 2020, at the Pomfret town offices. Once approved by the ZBA, minutes of the second public hearing will be posted to the Town of Pomfret website and incorporated by reference herein. The ZBA closed the evidentiary portion of its proceedings on March 5, 2020.

D. Proposed Revision of Zoning Ordinance

On December 12, 2019, the Pomfret Selectboard issued a public notice for a first public hearing on a proposed revision to the Pomfret Zoning Ordinance (the "Proposed Ordinance"). For a period of 150 days following such notice, 24 V.S.A. 4449(d) requires that "the administrative officer . . . shall review any new application filed after the date of the notice under the proposed bylaw or amendment and applicable existing bylaws and ordinances." Accordingly,

this Decision reviews the Application under applicable provisions of both the current Pomfret Zoning Ordinance (the "Current Ordinance") and the Proposed Ordinance.

II. Findings of Fact

A. Project Description

Based on Applicant's submissions and testimony, the Project consists of substantial interior and exterior improvements and renovation of the Property. Of particular relevance to these proceedings, Applicant proposes to perform the following work (collectively, the "Project"), as depicted on the Revised Site Plan:

1. Construction of a covered porch on the front of the Teago Building (the "Front Porch"), approximately twenty-six feet, seven inches (26' 7") wide and seven feet (7' 0") deep, and coming to not less than twenty-four feet, nine inches (24' 9") from the centerline of the Stage Road right-of-way at its closest point. The Front Porch will be on a plane with the Teago Building's first floor and will replace the existing wooden walkway that presently encroaches upon the Stage Road right-of-way.
2. Construction of an uncovered deck on the west side of the Teago Building (the "Side Deck") and cantilevered over Pomfret Brook, approximately twenty feet, four inches (20' 4") wide and eight feet (8' 0") deep, and coming to not less than ten feet (10' 0") from the Teago Lot west property line at its closest point. The Side Deck will be on a plane with the Teago Building's first floor.
3. Construction of a bay window on the west side of the Teago Building (the "Bay Window") cantilevered over Pomfret Brook, approximately ten feet, four inches (10' 4") wide and three feet, six inches (3' 6") deep, and coming to not less than ten feet (10' 0") from the Teago Lot west property line at its closest point. The Bay Window will be located on the Teago Building's first floor, at a height typical of such windows.
4. Improvements in front of the Teago Building (the "Frontage Improvements"), both within and outside of the Pomfret Road and Stage Road rights-of-way, including new lawn areas, sidewalk, granite curbing and an ADA accessible parking space.
5. Paving and striping of the Parking Area and installation of a pedestrian crosswalk across Stage Road and between the Parking Area and front entrance of the Teago Building (the "Parking Area Improvements"). The paved Parking Area would be located roughly where the gravel parking area is today, both within and outside of the Stage Road right-of-way.

6. Renovation of the residential apartments on the upper floors of the Teago Building, including a reduction in the size of one apartment to create mechanical space on the northern end of the Teago Building.

B. Property Location and Configuration

As shown on the Revised Site Plan, the Teago Lot is a small (+/- 0.33 acres), roughly triangular lot, a substantial portion of which comprises the Pomfret Brook. The Teago Building abuts the Pomfret Brook on the west and extends well into the Pomfret Road right-of-way on the northeast. The Teago Lot abuts the Stage Road right-of-way on the south. This unusual configuration presents particular challenges to the Project, and to ongoing maintenance of the Teago Building.

The Parking Lot is a similarly sized (+/- 0.33 acres), also roughly triangular lot immediately across Stage Road from the Teago Lot. The Parking Lot also abuts the Pomfret Brook on the west. The septic system serving the Teago Building is located on the Parking Lot.

Substantial portions of both the Teago Lot and the Parking Lot lie within the Pomfret Road and Stage Road rights-of-way. According to the land survey of the Property dated November 13, 1975 by Ralph J. Michael as Project No. 75-74, the portion of the Teago Lot not within a public right-of-way is +/- 0.13 acres and the portion of the Parking Lot not within a public right-of-way is +/- 0.23 acres.

III. Applicable Regulations

A. Pomfret Zoning Ordinance (the "Current Ordinance")

Under the Current Ordinance, all "Non-Conforming Uses" require a permit following a ZBA hearing. A Non-Conforming Use is anything other than a "Conforming Use". [Section 4.6] Conforming Uses are limited to "single, one-family or two family residence[s], agricultural buildings [and] home business[es]." [Section 4.5]

Before the ZBA may authorize a permit for a Non-Conforming Use, Section 11.3 requires the ZBA to determine that the proposed use conforms with the Town Plan and bylaws in effect and will not:

- Unreasonably burden the town to provide municipal services.
- Create a health hazard because of inadequate water or sanitary facilities.
- Create a pedestrian or vehicular hazard or congestion.
- Lead to or be subject to flooding, ponding, or soil erosion.
- Create a public nuisance or adversely affect the character of the area.

Moreover, without a variance, no structure or part thereof may be located closer than forty feet (40') to a side property line or closer than the greater of sixty feet (60') to the edge of a

public right-of-way and eighty-five feet (85') to the center of the traveled portion of a public right-of-way. [Section 7.4]

To grant a variance, in addition to making the findings described above, the ZBA "shall be guided" by the standards set forth in 24 V.S.A. 4469, in particular that:

- Unique physical characteristics of the property create an undue hardship beyond the general restrictions of the ordinance.
- Because of these physical circumstances, a variance is necessary to enable reasonable use of the property.
- The undue hardship has not been created by the applicant.
- The variance will not alter the essential character of the neighborhood, impair use of adjacent property or impair the public welfare.
- The variance represents the minimum necessary to afford relief.

B. Proposed Revision to the Pomfret Zoning Ordinance (the "Proposed Ordinance")

Under the Proposed Ordinance, "Conditional Uses" require a permit following a ZBA hearing. A Conditional Use is any use that is not otherwise exempt, permitted, or prohibited by the Proposed Ordinance. [Sections 2.2.1.5 and 2.2.2.5]

Conditional Uses must meet the general standards in Section 4.1, the general conditional use standards in Section 4.2, and any applicable special standards in Article 5. Additional limitations in Section 4.4 apply to "Non-Conforming Structures" that do not conform to the Proposed Ordinance but are otherwise lawfully existing.

Of particular relevance here, structures in the South Pomfret Village District (the district in which the Property is located) must be set back at least forty-five feet (45') from the centerline of a public right-of-way and twenty feet (20') from an adjacent lot line. [Section 2.2.1.2] Structures that do not meet these setbacks but are otherwise lawfully existing are "non-conforming" and may not be enlarged, altered, or extended such that the degree of nonconformance is increased. [Section 4.4.2(1)]

The ZBA may grant variances by following the same statutory criteria that apply under the Current Ordinance. [Section 6.7.2] The ZBA may also waive dimensional requirements under certain circumstances. [Section 3.2] However, the ZBA may not grant waivers for development encroaching upon a public right-of-way, which can be permitted only by the Pomfret Selectboard pursuant to 19 V.S.A. 1111(b). [Section 4.1(1)]

C. Pomfret Flood Hazard Area Regulations

The Pomfret Flood Hazard Area Regulations (the "Flood Regulations") are distinct from the Current Ordinance and the Proposed Ordinance, and adoption of the Proposed Ordinance will not affect the terms or applicability of the Flood Regulations.

The Flood Regulations require that any construction or development in a special flood hazard area ("SFHA") be permitted. In addition, development constituting "substantial improvement" is subject to conditional use approval following a ZBA hearing. [Part IV] A "substantial improvement" is one whose total cost exceeds fifty percent (50%) of the pre-improvement value of the structure being improved. [Part XIV]

IV. Conclusions of Law

A. Use Analysis

The pre-existing principal and accessory uses of the Teago Building have been acknowledged in that certain Settlement and Release Agreement dated October 18, 2019 and attached as Exhibit C (the "Settlement Agreement"), to which the Town of Pomfret is a party. Those uses are: "post office, sale of general merchandise, sale of various types of food and beverage items, including on-premise prepared food, sale of seasonal items, limited on-premise consumption of food, and upstairs residential use." [Section 4]

No element of the Project is changing a pre-existing principal or accessory use as provided in the Settlement Agreement. It is therefore not necessary to evaluate whether the proposed use(s) of the Property are consistent with the standards set forth in the Current Ordinance and the Proposed Ordinance.

B. Setback Analysis

Due to the unusual configuration of the Teago Lot, neither the Front Porch, Side Deck, Bay Window nor Frontage Improvements meet the required front and side setbacks under either the Current Ordinance or the Proposed Ordinance.

Under the Current Ordinance, a variance is required. Under the Proposed Ordinance, the ZBA may waive dimensional requirements, but no waiver can decrease the requirement by more than fifty percent (50%). As proposed, the Front Porch will not come within twenty-two and one-half feet (22.5') of the centerline of Stage Road (50% of the applicable 45-foot front setback). Nor will the Side Deck or Bay Window come within ten feet (10') of the Teago Lot west property line (50% of the applicable 20-foot side setback). As such, these setbacks can be waived.

Portions of the Frontage Improvements and the Parking Area Improvements, however, come within the Stage Road and Pomfret Road rights-of-way and therefore cannot be authorized by the ZBA under the Current Ordinance or the Proposed Ordinance, even if a waiver or variance were granted. Pursuant to 19 V.S.A. 1111(b), only the Pomfret Selectboard can authorize the portions of these improvements located in the public rights-of-way.

1. Current Ordinance (Variance)

The standard for granting a variance is especially stringent, in that all requirements of Section 11.3 of the Current Ordinance and 24 V.S.A. 4469 must be satisfied. Nevertheless, the ZBA

concludes these requirements have been met with respect to the Project.

As more particularly explained in Section IV.B.2 below, the ZBA concludes that the Project conforms with the Town Plan. The ZBA also concludes that the Project will have minimal impact on the current level of activity at the Property, such that the Project will not unreasonably burden the Town, nor create health, pedestrian or vehicular hazards as contemplated in Section 11.3 of the Current Ordinance. With appropriate safeguards, the Project also will not create flooding concerns or a public nuisance. These matters are addressed in Section VI below.

The ZBA also concludes that standards set forth in 24 V.S.A. 4469 are satisfied with respect to the Project. The unusual configuration of the Teago Lot renders development of that lot difficult if not impossible in conformity with the Current Ordinance. This hardship is not of Applicant's making. And the variance sought is minor relative to the existing structure and will not alter the essential character of the neighborhood.

2. Proposed Ordinance (Waiver)

Under the Proposed Ordinance, a waiver may be granted if certain criteria are met. [Section 3.2] Consistency with the Town Plan and satisfaction of one other criterion will suffice. Among these other criteria is consistency with development patterns of neighboring properties.

The ZBA concludes that the Project is consistent with the Town Plan. The "Teago General Store" is listed among Pomfret's "special features" (Page 29), noted as the focal point of the South Pomfret village area (Page 29), and acknowledged to be an important aspect of the local economy (Page 84).

At the first public hearing several Pomfret residents expressed their support for the Project and described the importance of the Teago General Store to their daily routines and quality of life. Members of the ZBA also know first-hand the civic, social and cultural importance of the Teago General Store to Pomfret and the surrounding communities. The ZBA believes the Project will improve the Teago General Store, thereby enhancing its value to the community, consistent with the values expressed in the Town Plan.

While the Teago Lot is perhaps the most constrained among its neighboring properties, its small size, unusual shape and limiting setbacks are not unique in the South Pomfret village area. Many neighboring structures do not comply with setback requirements of the Current Ordinance or the Proposed Ordinance and would need waivers and/or variances to be built today. The ZBA therefore concludes the Project is consistent with existing development patterns of neighboring properties.

C. Pomfret Flood Hazard Area Regulations

Nearly all of the Property is located in an SFHA, namely Zone A as depicted on FEMA's most recent Flood Insurance Rate Map for the Property, panel 50027C0345E. As a result, the Project

is subject to the Flood Regulations.

The Front Porch, Side Deck and Bay Window will be completed at or above 734.0 feet above sea level, which is one foot (1.0') above the Property's base flood elevation of 733.0 feet, calculated using the contour interpolation method described in FEMA Publication 265, "Managing Floodplain Development in Approximate Zone A Areas" (1995). As a result, these elements of the Project do not require a permit under the Flood Regulations.

However, the Frontage Improvements, Parking Area Improvements and other work being done within the Teago Building will be completed at or below 734.0 feet above sea level. Moreover this work, together with the Front Porch, Side Deck and Bay Window constitute a "substantial improvement" as defined in the Flood Regulations, as their total cost will substantially exceed fifty percent (50%) of the pre-improvement value of the Teago Building.

As such, portions of the project require a permit under the Flood Regulations and the entire Project and related work is subject to applicable development standards in Part VII of the Flood Regulations, in particular Subparts B.1, B.3, B.5, B.8 and B.9 of Part VII. Applicant is also subject to compliance with the certification requirements of 44 C.F.R. § 60.3. [Part XIV]

V. Decisions

Based on information presented to the ZBA, the findings and conclusions described above, and subject to the conditions and limitations specified in Section VI below, the ZBA makes the following decisions:

- A. *Front Porch.* A variance under Section 7.4 of the Current Ordinance and a waiver under Section 3.2 of the Proposed Ordinance are hereby **granted** for the Front Porch.*
- B. *Side Deck.* A variance under Section 7.4 of the Current Ordinance and a waiver under Section 3.2 of the Proposed Ordinance are hereby **granted** for the Side Deck.
- C. *Bay Window.* A variance under Section 7.4 of the Current Ordinance and a waiver under Section 3.2 of the Proposed Ordinance are hereby **granted** for the Bay Window.
- D. *Frontage Improvements*
 - 1. *Outside the Public Right-of-Way.* A variance under Section 7.4 of the

* The ZBA notes that the setback of the Front Porch is greater than the setback of the structure the Front Porch will replace, though it will still be less than required under the Current Ordinance and the Proposed Ordinance. The ZBA is granting a variance and waiver for the Front Porch without addressing the question of whether either or both approvals are required here.

Current Ordinance and a waiver under Section 3.2 of the Proposed Ordinance are hereby **granted** for that portion of the Frontage Improvements located outside the public right-of-way.

2. Inside the Public Right-of-Way. No approval can be given by the ZBA for the portion of the Frontage Improvements located inside the public right-of-way. Applicant must obtain approval from the Pomfret Selectboard for this element of the Project.

E. *Parking Area Improvements*

1. Outside the Public Right-of-Way. A variance under Section 7.4 of the Current Ordinance and a waiver under Section 3.2 of the Proposed Ordinance are hereby **granted** for that portion of the Parking Area Improvements located outside the public right-of-way.
2. Inside the Public Right-of-Way. No approval can be given by the ZBA for the portion of the Parking Area Improvements located inside the public right-of-way. Applicant must obtain approval from the Pomfret Selectboard for this element of the Project.

F. *Project and Related Work (Flood Regulations)*

1. Substantial Improvements in SFHA. Conditional use approval is **granted** for the portion of Applicant's proposed substantial improvement of the Property in an SFHA that is located outside the public right-of-way.
2. Development in SFHA. A permit is **authorized** for the portion of Applicant's proposed development in an SFHA that is located outside the public right-of-way.
3. SFHA Inside the Public Right-of-Way. No approval can be given by the ZBA for the portion of Applicant's proposed substantial improvement and development in an SFHA that is located inside the public right-of-way. Applicant must obtain approval from the Pomfret Selectboard for these elements of the Project.

VI. Conditions and Limitations

The decisions described above are subject to the following conditions and limitations:

- A. The Project and related work shall conform in all material respects with the Application Materials (i.e., Applicant's submissions, plans and written representations to the ZBA), except as expressly modified herein. Any and all material changes to the Project or Application Materials shall require further review and approval by the ZBA under the then applicable regulations.

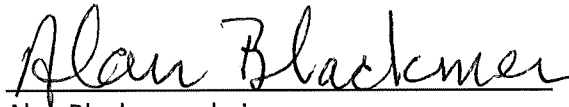
- B. The Project and related work shall not exceed the dimensions or setbacks described in Section II.A above.
- C. To ensure the Project does not change the existing use of the Property, which is acknowledged in the Settlement Agreement to include "limited on-premise consumption of food," Applicant shall (1) limit seating capacity in the Teago General Store portion of the Property (including areas in and around the Parking Lot) to fifteen (15) persons and (2) limit the Teago General Store hours of operation to between 7:00 A.M. and 6:00 P.M. daily. A change in the existing use of the Property would require a more substantial impact analysis by the ZBA under both the Current Ordinance and the Proposed Ordinance.
- D. To ensure the Frontage Improvements and Parking Area Improvements do not result in flooding, ponding or soil erosion as contemplated in Section 11.3.4 of the Current Ordinance, Applicant shall (1) comply with Section 4.2(18)(a) of the Proposed Ordinance for drainage around the Teago Building and Parking Area and (2) except for work required by the foregoing clause (1), maintain a vegetated non-disturbance buffer between the paved portion of the Parking Lot and Pomfret Brook at least as wide as the buffer now existing between the gravel parking area and Pomfret Brook.
- E. To ensure the Project does not create a public nuisance or adversely affect the character of the area, as contemplated in Section 11.3.5 of the Current Ordinance, Applicant shall (1) refrain from installing exterior lighting in the Parking Lot, (2) comply with Section 4.1(14) of the Proposed Ordinance for any exterior lighting installed in connection with the Project or related work, and (3) comply with the standards sets forth in Section 1(a) of the Settlement Agreement, including (but not limited to) with respect to mechanical equipment for the Teago Building.
- F. Applicant shall comply with applicable development standards and certification requirements set forth in Parts VII and XIV of the Flood Regulations, which are incorporated by reference herein.
 - 1. In particular, prior to any use or occupancy of the Teago Building after the Project has commenced, Applicant shall provide the ZA with the certifications described in Subparts B.3(c) and B.5(c) of Part VII of the Flood Regulations.
- G. No approval, waiver or variance is granted herein with respect to any element of the Project or related work within the public right-of-way.
 - 1. If in the conduct of its review under 19 V.S.A. 1111(b), the Selectboard imposes conditions and/or requires modifications to the Project plans that materially impact the terms and conditions of this Decision, or of the

Project as approved herein, Applicant shall submit an amended application reflecting the Selectboard's required conditions and/or modifications.

- H. The Project and related work shall conform to all applicable federal, state and local laws, ordinances and regulations, whether or not the same have been expressly referenced herein.
- I. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses or activities with the applicable zoning bylaws was not considered and is not addressed in this Decision. Any prior decision of the ZBA affecting the Property, the Project, or any other structure, use or activity shall continue in full force and effect, except as provided herein.

* * * * *

This Decision approved at Pomfret, Vermont, this 6 day of March, 2020.



Alan Blackmer, chair
Zoning Board of Adjustment

ZBA members Alan Blackmer, Benjamin Brickner, Shaun Pickett and Michael Reese voted in the affirmative. Loie Havill did not participate in this Decision.

NOTICE: This Decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. 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.

EXHIBIT A

Zoning Permit Application ZP20-01

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ZONING PERMIT

Town of Pomfret, Vermont
ZONING PERMIT APPLICATION

Permit No.
ZP20-01

Parcel ID number: **0121 - 1 & 2** Est. cost of project: **\$ 750,000** App. fee**

Applicant: **Pomfret Road General Store LLC** Phone Number (daytime): **802 - 457 - 1626**

Address: **2035 Pomfret Road**
South Pomfret, VT 05067

Lot 1 (Store): 0.13ac
 Lot Size: Lot 2 (Parking): 0.22ac

Email: **kd@artistreevt.org / Christeago@gmail.com**

Street Address of Property: **2035 Pomfret Road, South Pomfret, VT 05067**

Property Owner (if not same as Applicant): _____

Address: _____

DESCRIPTION OF PROPOSED WORK

Description of proposed work (incl. dimensions): The project consists of interior renovations, envelope upgrades, replacing the exterior stair, an new front porch and a new deck over the river. The Post Office will remain on the first floor. The two apartment on the second floor will be renovated and a mechanical space will take over part of one of the existing apartments.

Closest distance between new structure/addition and the following property lines (as shown on sketch):
 front/street: deck: 21 ft. back: deck: 100 ft. right: deck: 18 ft. left: deck: 11 ft.
 Height: existing: 38 ft. No. & type of farm animals for farm structures: not applicable
porch: 12 (+/-)

NOTICE: Permits must be approved a minimum of 15 days before commencing new use or construction. Use or construction authorized by this permit must be commenced within one year of issue unless delayed by litigation or permit expires.

ACTION OF THE ADMINISTRATIVE OFFICER

ID of zoning district: Village District ID and classification of use: conditional use and variance
 Application is REFERRED to the ZBA or PC for the following review and approval:
 Ridgeline Variance Conditional Use Other: _____

01 - 06 - 20 AO Signature: [Signature]

FINAL ACTION OF THE ADMINISTRATIVE OFFICER

APPROVED APPROVED with conditions noted DENIED NO PERMIT REQUIRED

Comments: _____

AO Signature: _____

WARNING: State permits may be required for this project. Call 802-279-4747 to speak to the State Permit Specialist before beginning construction.

**See current fee schedule. Make check payable to Town of Pomfret.

PROPERTY SKETCH

ZP20-01

INSTRUCTIONS: Draw a lot outline and proposed construction within the lot showing distances to boundaries, existing buildings and location of roads, drives and parking. Show septic facilities and water supply for new residences. Indicate North on your sketch. Use another sheet or attach plans if appropriate.

SEE ATTACHED

CERTIFICATIONS OF APPLICANT AND/OR PROPERTY OWNER

PROPERTY OWNER: The undersigned property owner hereby certifies that the information on this application is true and accurate, consents to its submission, and understands that if the application is approved, the zoning permit and any attached conditions will be binding on the property. Further, the undersigned authorizes the Administrative Officer access, at reasonable times, to the property covered by the permit issued under this application, for the purposes of ascertaining compliance with said permit.

Property Owner's signature

Date

APPLICANT (if not property owner): The undersigned applicant hereby certifies that ALL the information submitted on and with this application is true and accurate.

Steve A. Boston
Applicant's signature

12/23/19
Date

OFFICE USE ONLY

Received [] [] - [] [] - 19

Fee \$ [] [] - [] [] - 19

Paid or deposited [] [] - [] [] - 19
Application deemed complete

An applicant and/or interested person (as defined in 24 VSA §4464) may appeal any decision of the Administrative Officer to the Zoning Board of Adjustment (ZBA) within 15 days of the date of the decision. Said notice shall be in writing, mailed or delivered to the Clerk of the ZBA, and give the reasons for the appeal. Failure to appeal this decision may prevent any party from arguing against its elements in a future hearing or appeal. 24 VSA §4472.

EXHIBIT B

Revised Site Plan

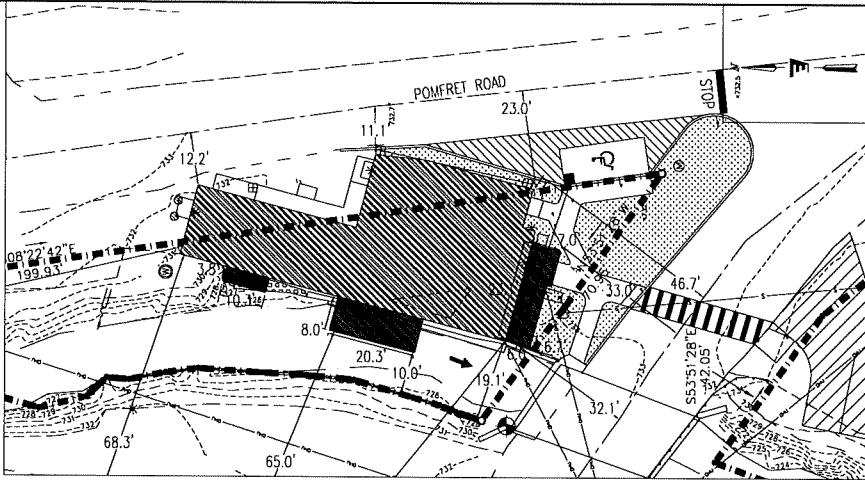
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GENERAL NOTES

1. EXISTING CONDITIONS SHOWN HEREON ARE BASED ON RECORD DRAWINGS, SURVEY DATA AND VISUAL OBSERVATION. THE CONTRACTOR IS TO VERIFY ALL CONDITIONS BY FIELD SURVEY AND TO CALL OUT ANY DISCREPANCIES TO THE ARCHITECT PRIOR TO ANY COMMENCEMENT OF WORK.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL AFFECTED AGENCIES AND AGENCIES OF THE STATE PRIOR TO THE COMMENCEMENT OF WORK.
3. THE CONTRACTOR IS PROHIBITED FROM COORDINATING WITH ANY OTHER CONTRACTORS PERFORMING WORK ON THIS JOB SITE DURING THE PERFORMANCE OF THIS CONTRACT.
4. THE CONTRACTOR SHALL MAINTAIN UNINTERRUPTED ACCESS TO ALL ADJACENT PROPERTIES OWNED OR OCCUPIED BY OTHERS AT ALL TIMES DURING THE PERFORMANCE OF THIS CONTRACT.
5. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES OWNED OR OCCUPIED BY OTHERS AT ALL TIMES DURING THE PERFORMANCE OF THIS CONTRACT.
6. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE COST OF ALL REQUIRED PERMITS, APPROVALS AND CERTIFICATES.
7. THE CONTRACTOR SHALL MAINTAIN UNINTERRUPTED ACCESS TO ALL ADJACENT PROPERTIES OWNED OR OCCUPIED BY OTHERS AT ALL TIMES DURING THE PERFORMANCE OF THIS CONTRACT.
8. IF AT ANY TIME DURING THE PERFORMANCE OF THIS CONTRACT THE CONTRACTOR IS REQUIRED TO OBTAIN ANY PERMITS, APPROVALS AND CERTIFICATES FROM ANY AGENCY, THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE COST OF ALL SUCH PERMITS, APPROVALS AND CERTIFICATES.
9. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST REVISED REGULATIONS FOR CONSTRUCTION.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE COST OF ALL REQUIRED PERMITS, APPROVALS AND CERTIFICATES.
11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE COST OF ALL REQUIRED PERMITS, APPROVALS AND CERTIFICATES.
12. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE COST OF ALL REQUIRED PERMITS, APPROVALS AND CERTIFICATES.
13. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE COST OF ALL REQUIRED PERMITS, APPROVALS AND CERTIFICATES.
14. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE COST OF ALL REQUIRED PERMITS, APPROVALS AND CERTIFICATES.
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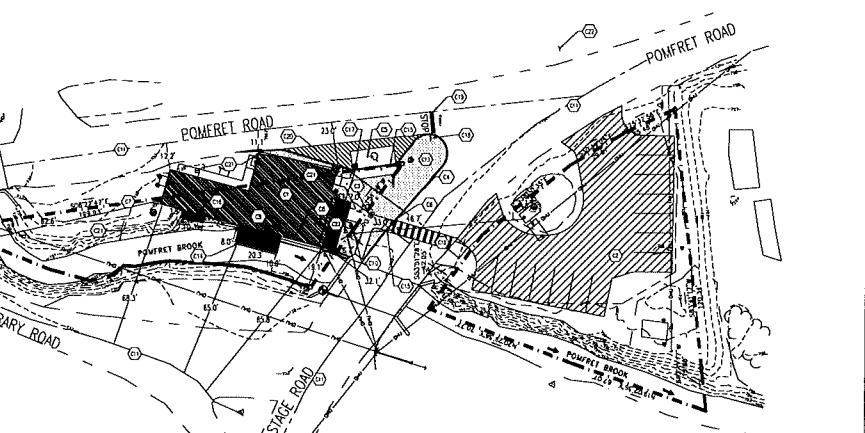
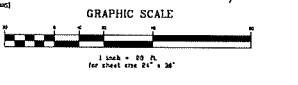
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PROPOSED SITE FEATURES

1. PROPOSED BUILDING. REFER TO ARCHITECTURAL PLANS.
2. PAVED DRIVE, SURFACE PARKING AND STORM.
3. 4" OF WIDE CONCRETE SIDEWALK. UNLESS OTHERWISE NOTED.
4. 6" DIAMETER CURB. SEE DETAILS.
5. PAVED ADA PARKING (STANDARD AND VAN ACCESSIBLE) SIGN AND STAMPING.
6. SIDEWALK LAMPING PLATES (SIP).
7. PROPERTY LINE.
8. FRONT PROPERTY SETBACK.
9. SIDE PROPERTY SETBACK.
10. PROPOSED DRIVE TYP.
11. CENTER OF RIGHT OF WAY.
12. INTERSECTION CROSS MARK UTILIZING PROPOSED PHOTOGRAPHIC MARKERS. COORDINATE INSTALLATION WITH POMFRET DEPARTMENT OF PUBLIC WORKS.
13. NEW SIGN AREA.
14. PROPOSED SIGN LOCATION (12' BY 8' BY 8').
15. FLUSH CURB.
16. PROPOSED ADA SIGN (24" BY 18" BY 18").
17. NEW 4" DIAMETER CURB MARK WITH 4" STAMP AND HIDDEN GUTTER 1/4" HIGH PAVE.
18. NEW STOP SIGN.
19. 24" STOP SIGN AND 4" LETTERS (COORDINATE WITH POMFRET DPW AND UTILITIES).
20. IMPROVED ADA PARKING SPACE.
21. CONTINUATION TO IMPROVE COVERAGE OF PPE AND OTHER SIGN AND CURB OR MARKER.
22. ROUND TOP SIGN (COORDINATE WITH POMFRET DPW AND UTILITIES).
23. NEW SIGN (12' BY 8' BY 8').



Stamp
DATE
PROJECT NO. 2024-001
PROJECT NAME
CLIENT
DESIGNED BY
CHECKED BY
DATE
SCALE
2.0

ENGINEERING VENTURES INC.
1000 W. 10th Street, Suite 100, Fargo, ND 58103
701.785.1234
www.engineeringventuresinc.com

PROPOSED-SITE PLAN
Project Name: Targo General Store
Scale: 1"=20'
Date: 12/1/2023

Designed By: [Signature]
Checked By: [Signature]
Date: 12/1/2023

2.0

EXHIBIT C

Settlement and Release Agreement

Begins next page.

**FOR SETTLEMENT PURPOSES ONLY – VRE 408 – WITHOUT
PREJUDICE**

SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into this 18 day of October, 2019, by and between *Purple Crayon Production, Inc.* (“PCP”), *the Town of Pomfret* (“the Town”), and, Sharlene and Jim Kelly except with respect to Sections 3 and 4 (“the Kellys”) (collectively the “Parties”).

WHEREAS, the Town, by and through its Zoning Board of Adjustment (the “ZBA”), issued a decision dated December 11, 2018, denying PCP’s request for a modification of use of its property, known as the Cast House, located at 43 Stage Road, Pomfret, Vermont, to allow a remote orchestra housed in the barn to electronically transmit music to the Teago Grange Theater, which is located on the same lot as the Cast House (the ZBA Decision); and

WHEREAS, PCP timely filed an appeal of the ZBA Decision, followed by a statement of Questions on Appeal, with the Vermont Superior Court Environmental Division, Docket No. 5-1-19 Vtec (the “Litigation”); and

WHEREAS, the Kellys timely filed a notice of appearance in the Litigation; and

WHEREAS the Parties, without in any way admitting or conceding any factual or legal claims that any of them may have, desire to amicably settle and resolve their differences through this Agreement rather than through the Litigation; and

WHEREAS, PCP and the Town further desire to define through this Agreement the scope and nature of certain other existing operations in the Town, including Artistree Community Arts Center and Teago General Store, which are owned or controlled by persons or entities related to PCP; and

WHEREAS, the Parties are committed to working cooperatively and in good faith, on an on-going basis, to establish open communication and to resolving issues and concerns related to the above-referenced operations, including any issues that may exist related to pedestrian and vehicular traffic access, circulation, parking and safety;

NOW, THEREFORE, in consideration of the recitals stated above, which are hereby incorporated into this Settlement Agreement, and in consideration of

the mutual promises, covenants, agreements, representations, and warranties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto stipulate and agree as follows: that the Environmental Division may issue an order granting modified use of the Cast House barn for use by a remote orchestra, subject to the following terms and conditions.

1. Sound Provisions.

To avoid creating unreasonable noise, PCP shall conform to the following sound standards in connection with the use of its property in Pomfret:

a) Sound levels from performances, events, rehearsals and other activities shall not exceed the following limits:

		Location	One Hour Equivalent Average dBA (L_{1h})	Instantaneous Slow-Response Maximum dBA (L_{Smax})
Daytime	Between 7:30am and 10:00pm	Cast House/Grange Property Lines	70 dBA	80 dBA
Nighttime	Between 10:00pm and 7:30am	Dwelling or Temporary Lodging Facility	45 dBA	60 dBA

b) Noises associated with temporary building construction, temporary home improvement/renovation projects, and noises associated with routine and customary uses of property (e.g., lawnmowers), are not subject to the standards above.

c) Upon application, the Zoning Board of Adjustment (ZBA) may waive or modify the noise limits set forth above for a specified period, frequency and/or purpose, subject to reasonable conditions and safeguards, and provided the ZBA finds that the noise limits, as waived or modified, will not result in unreasonable noise that disturbs, injures or endangers the peace

and health of another or endangers the health, safety and welfare of the community.

- d) To help insure compliance with the above-referenced standards, PCP shall maintain sound proofing insulation or other noise reducing building materials in the Cast House.

2. Cast House Use/Teago Grange Theater.

PCP shall utilize the Cast House and its surrounding property, which is now merged with the Teago Grange Theatre parcel, for only those uses that are consistent with and accessory to the use of the Teago Grange Theatre, which is the principal use of the lot. Currently authorized accessory uses of the Cast House, as set forth in ZP17-11, include: short-term temporary occupancy by cast members or other artists (with attendant residential use of up to four-bedrooms, common kitchen and bathrooms), practice space, changing rooms/toilets and assembly of stage props in the attached barn. The following activities shall also be deemed to be within the scope of allowed accessory uses: Green room, costume production and storage, management offices, audition space, rehearsal space with or without music, scene shop, props shop and storage, meetings, reception-like events, theatre camps, accessory performance uses in conjunction with a scheduled performance, and use of barn by remote orchestra associated with the Grange Theatre. All accessory uses of the Cast House, Cast House barn and the surrounding property must comply with the above-referenced sound standards, as well as with the terms and conditions of all applicable zoning and other land use permits and approvals issued by the Town. Use and operation of Teago Grange Theatre shall conform to its existing permits and approvals.

3. Artistree Community Arts Center.

PCP and the Town agree that the Artistree Community Arts Center, located at 2095 Pomfret Road, is an asset to the Town and that its art and music educational programs, classes and camps are all existing, allowed uses. The Town and PCP further agree that, while located on separate lots, there is a close and supporting relationship between activities and uses on the Artistree property and those on the Grange Theatre/Cast House property, with the facilities sharing common parking and pedestrian access facilities. These properties are also owned, controlled and operated by the same persons and/or entities and have a unified or closely related mission. Accordingly, uses by Artistree of the Grange Theatre and Cast House property for art and music educational programs, classes and camps shall not constitute a change of use, provided that such uses conform with all current and existing permits and conditions, including the terms of this Settlement Agreement.

4. Teago General Store.

PCP and the Town recognize the pre-existing Teago General store, located at 2035 Pomfret Road, as a hub for the community, which provides a mixed retail, residential and institutional (i.e., post office) use. PCP and the Town also acknowledge the challenges of the general store's location, being bounded by two converging town roads and a small stream running along another side of the building.

PCP and the Town further agree that the following activities are pre-existing principal or accessory uses of the Teago General Store building: Post office, sale of general merchandise, sale of various types of food and beverage items, including on-premise prepared food, sale of seasonal items, limited on-premise consumption of food, and upstairs residential use. PCP and the Town acknowledge that the forgoing uses, and any changes thereto, may require additional licensing and permitting from the state and do not presume to replace such licensing or permitting requirements by this Agreement. PCP and the Town further acknowledge that certain activities requiring external dimensional or structural alterations or additions, and work within the public right of way, may also be subject to review and approval by the appropriate municipal body. Nothing herein shall specifically authorize any land development associated with Teago General store, nor deprive the Town of its authority to regulate such land development and/or activities within the public right-of-way.

5. Mutual Release and Hold Harmless.

PCP, the Town and the Kellys, each in consideration for the mutual covenants contained herein, for themselves and anyone who may claim through them, including but not limited to their personal representatives and assigns, do hereby irrevocably and unconditionally release and forever discharge each of the other Parties to the Litigation, their subsidiaries, agents, members, managers, directors, shareholders, officers, employees, representatives, attorneys, predecessors, successors, heirs, executors, administrators and assigns ("Litigation Releasees"), from any and all claims, damages, complaints, causes of action, suits, liabilities, demands and expenses (including attorneys' fees) of any nature whatsoever, both at law and in equity, whether known or unknown, now existing or which may result from the existing state of things, which any of the Parties now have or ever had against the Litigation Releasees from the beginning of time to the date of these presents, including but not limited to those arising out of, concerning, in connection with, or otherwise related to any and all claims which have been or could have been asserted in the Litigation.

Notwithstanding the foregoing, nothing herein shall be construed to preclude the Town of Pomfret from enforcing those provisions of local, state and federal law that it is charged with enforcing, including, without limitation, the Pomfret Zoning Ordinance, except as set forth in this Settlement Agreement. Nothing shall preclude any Party from enforcing the terms and conditions of this Settlement Agreement in accordance with Paragraph 11, below and as subject to the limitations set forth herein.

6. Non-Admission of Liability.

It is further understood and agreed by the Parties that this Agreement is a compromise of any and all claims they may have, and that this Agreement is not, and is not to be construed as, an admission of liability on the part of any party hereto.

7. Dismissal of the Litigation

Along with the submission of this Agreement to the Environmental Division of the Vermont Superior Court, the Parties, through counsel, shall file a Stipulation of Dismissal and Order in the form attached hereto as Schedule A. The Litigation shall be dismissed as to all of the Parties, with prejudice and without costs.

8. Entire Agreement.

This Agreement, including Schedule A, contains the entire agreement between and among all the Parties, and supersedes all prior agreements or understandings, written or otherwise, which are expressly hereby agreed to be of no further force or effect.

9. Interpretation of Settlement Agreement and Release.

The Parties to this Agreement acknowledge that: (a) this Agreement and its reduction to final written form are the result of good faith negotiations between the parties through their respective counsel; (b) said counsel have carefully reviewed and examined this Agreement before execution by said Parties; and (c) any statute or rule of construction that ambiguities are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement.

10. Law.

This Agreement shall be controlled, interpreted, and construed according to

Vermont Law.

11. Enforcement.

Upon execution, this Agreement shall be a public record and nothing herein shall construed to prevent the Parties from disclosing its terms for the purpose of taking legal action to enforce the same, including in any proceeding for contempt. However, prior to commencing any action to enforce the terms of this Agreement, the parties shall first meet in good faith in an effort to resolve their difference, and may, if appropriate and by mutual agreement, engage the services of a mediator to assist in them. In the event of litigation arising out of the terms of this Agreement, the prevailing party in such proceeding, in addition to any available damages, shall be entitled to recover from the other its costs and expenses incurred in connection therewith, including reasonable attorneys' fees. In any contempt proceeding, any requirement of service of Schedule A, the Stipulation of Dismissal and Order (or the relevant judgment order), prior to commencement of an action is hereby waived.

12. Execution.

The Parties agree that this Agreement may be executed by conformed copies.

13. Miscellaneous provisions.

A. The parties to this Agreement represent and warrant to one another that no claim or matter herein released or waived has been assigned or purportedly assigned.

B. This Agreement is deemed to have been prepared jointly by the parties. If any ambiguity exists, it shall not be interpreted against any of the parties by reason of authorship.

C. The parties to this Agreement agree that if any term, provision, promise, covenant, agreement, representation, or warranty of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, promises, covenants, agreements, representations, and warranties shall remain in full force and effect and shall in no way be affected, impaired, or invalidated; and the obligations under the Agreement are independent of each other and a breach of an obligation by a party does not relieve any other party of its duties to perform fully and faithfully its obligations under the Agreement.

D. This Agreement shall be binding upon and inure to the benefit of and

be enforceable by each of the parties to the Settlement Agreement, and their respective legal representatives, board members, officials, employees, agents, heirs, successors and assigns.

E. All promises, covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of this Agreement.

F. This Agreement may only be modified in writing executed by all parties hereto.

G. A waiver by any party of a breach of any of the provisions of the Agreement shall not operate as a waiver of any other provision of the Agreement or of any other breach of the Agreement.

H. Unless otherwise specifically and expressly set forth herein, nothing in this Settlement Agreement and Release shall effect, modify or invalidate the terms and conditions of any prior permit or approval pertaining to the Artistree Community Arts Center, the Teago Grange Theater, the Cast House or the Teago General Store. To the extent that a latent inconsistency is identified, the identifying party shall bring the issue to the attention of the other parties, and collectively the parties shall work in good faith to reconcile the issue and give effect to the intent of the controlling documents.

I. While not a party to the pending appeal before the Environmental Division, Kathleen M. Dolan, as the president of Purple Crayon Productions, Inc., managing member of Artistree Productions, LLC, and a member of 2035 Pomfret Road, LLC, agrees to sign this Settlement Agreement and Release, and to be bound thereby and by any subsequent Court order, including any terms and conditions of the foregoing, in both her individual and representative capacities. Her signature, evidencing such agreement, is set forth below.

[REMAINDER OF THIS PAGE BLANK]

IN WITNESS WHEREOF, the Parties, having read the foregoing Settlement Agreement and Release carefully, and knowing and understanding its contents and effects, sign and seal the same as their own free act and deed.

Purple Crayon Production, Inc.

DATED: 10/18, 2019

By: Kathleen M. Dolan

Its: President

Kathleen M. Dolan

DATED 10/18, 2019

By: Kathleen M. Dolan
In her individual and representative capacities

Town of Pomfret

DATED: 10/21, 2019

By: Emily M. Quibe

Its: Duly Authorized Agent

Sharlene Kelly

DATED: _____, 2019

GENERAL NOTES

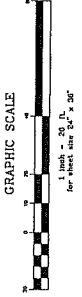
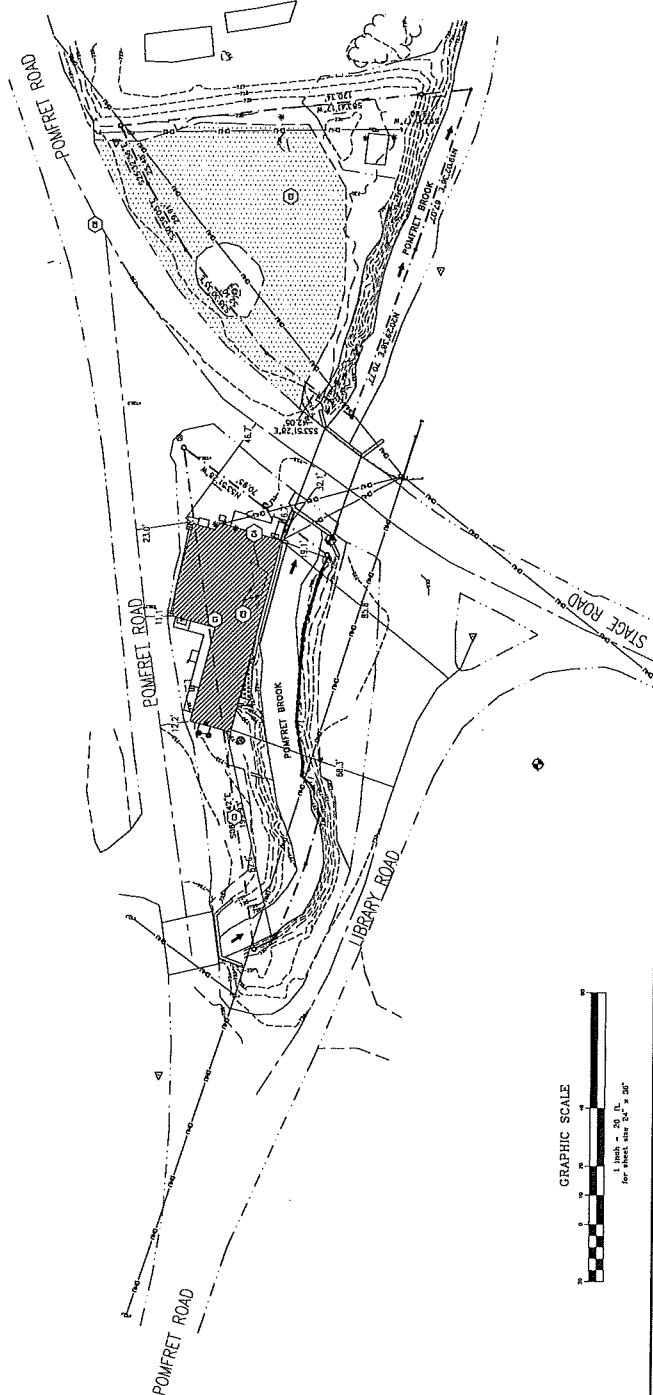
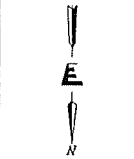
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FLOOD PLAIN NOTES

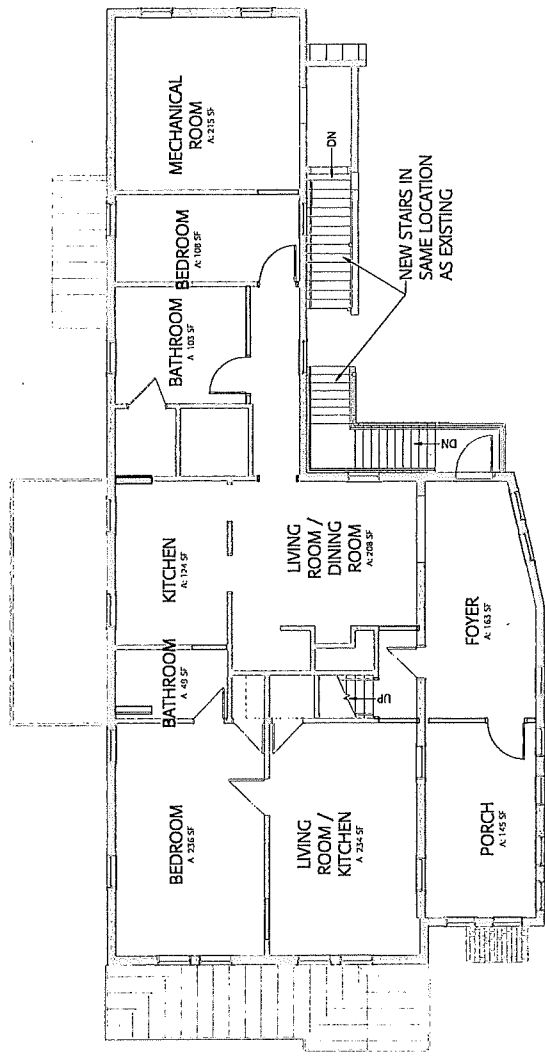
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EXISTING SITE FEATURES

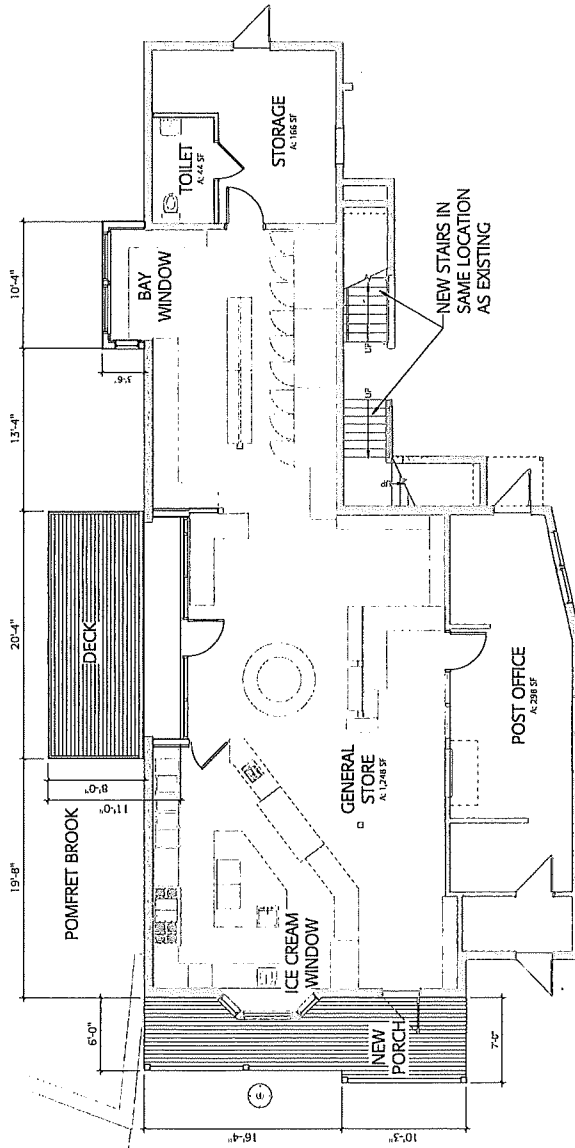
- (1) TOPOGRAPHY CONTOUR
- (2) EXISTING BUILDINGS
- (3) EXISTING DRIVEWAYS
- (4) EXISTING PROPERTY LINES
- (5) EXISTING FENCE LINES
- (6) EXISTING UTILITY LINES
- (7) EXISTING ROAD CENTER LINES
- (8) EXISTING ROAD RIGHT-OF-WAY



<p>E ENGINEERS PC 2015 Licensed Professional Engineer 1000 North Main Street, Suite 100 Pomfret, Vermont 05762 Tel: 802-895-1111 Fax: 802-895-1112 www.eengineerspc.com</p>		<p>Project Title: Teago General Store 2015 Project #4 1000 North Main Street, Suite 100 Pomfret, Vermont 05762</p>		<p>Sheet Title: EXISTING SITE CONDITIONS Teago General Store</p>		<p>Scale: 1.0" Date: 12/17/2018</p>	
Drawn By: [Name]	Checked By: [Name]	Project No: [Number]	Sheet No: [Number]	Scale: 1"=50'	Date: 12/17/2018	<p>Sheet Title: EXISTING SITE CONDITIONS Teago General Store</p>	



LEVEL 2 PLAN



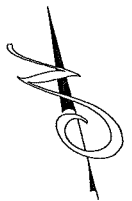
LEVEL 1 PLAN

MAX SEATING: 15



SCALE: 3/16" = 1'-0"

Teago General Store
 2035 Pomfret Rd, South Pomfret, VT 05067



2/5/2020

