

**TOWN OF POMFRET**  
**Zoning Board of Adjustment**

Minutes and Memorandum of Decision

Permit Application: #ZP20-35  
Property Address: 328 Caper Street, North Pomfret  
Parcel No.: 1308  
Parcel Size: 5 +/- acres

Property Owner: Lorraine Atwood  
328 Caper Street  
North Pomfret, Vermont 05053

Applicant: Lorraine Atwood  
328 Caper Street  
North Pomfret, Vermont 05053  
Email: [on file]

**I. Introduction and Procedural History**

**A. Application**

Lorraine Atwood is seeking approval to install on her property a 1,568 square foot double wide trailer that would be permanently set with its own septic system, electric meter and shared well water, shared driveway and parking.

The Zoning Permit Application (the Application) dated October 21, 2020 was referred to the Zoning Board of Adjustment (ZBA) for conditional use review by the Zoning Administrator (ZA) on November 16, 2020. The Application and all supporting documents are on file with the ZA.

On November 16, 2020, notice of a public hearing was posted at the Town Clerk's Office, North Pomfret Post Office and on the Pomfret Vermont website. On November 19, 2020, notice was published in the *Vermont Standard*. The ZA mailed the notice to the following property owners abutting the subject property: Ronald and Sally Weglarz, Lewis and Alison Curtis, Howard Chase, Craig MacRae and Valerie Ritter, Robert Jones and Kendra Dynok.

**B. Site Visit and Public Hearing**

Following a site visit at the property on December 8<sup>th</sup>, 2020 at 3:45 pm, the ZBA considered the Application at a public hearing on December 8<sup>th</sup>, 2020 at 6pm via Zoom Meeting.

- Present at the site visit were the following members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, Phil Dechert, Shaun Pickett, Seth Westbrook. Also

present were Karen Hewitt Osnoe (ZA), Lorraine Atwood (Applicant), Charlie Jones, Sally Weglarz (abutter).

- Present at the hearing were the following members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, Phil Dechert, Shaun Pickett, Seth Westbrook. Also present were Karen Hewitt Osnoe (ZA), Tim Reiter, Lorraine Atwood (Applicant), Charlie Jones, Sally Weglarz, Ronald Weglarz, Craig MacRae, and Valerie Ritter.
- The meeting was opened at 6:20pm by ZBA chair Alan Blackmer.
- At the outset of the hearing, the ZBA afforded those persons wishing to achieve status as an interested party an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. Sally Weglarz, Ronald Weglarz, Craig MacRae, Valerie Ritter and Charlie Jones were granted interested party status.
- During the hearing the following testimony was heard from Lorraine Atwood and Charlie Jones:
  - The trailer comes to approximately 30 feet of the Atwood-Weglarz property line.
  - The subject parcel is listed in the Grand List at 5.00 acres but has not been surveyed.
  - The trailer will have a separate wastewater system but the well and driveway will be shared with the preexisting residence.
  - The Atwoods intend to install some landscaping on the north side of the trailer.
- In addition to testimony received at the public hearing, the ZBA received an email request and annotated site map from abutter Craig MacRae requesting that visual screening be required between the trailer and Mr. MacRae's property. Abutter Sally Weglarz made a similar request during the public hearing.

## **II. Applicable Regulations**

- Under the Pomfret Zoning Ordinance (the Zoning Ordinance), any land use that is not exempt, permitted, or prohibited is a conditional use.
- Installation of the trailer is neither exempt from the Zoning Ordinance nor eligible for an administrative permit from ZA. Therefore, conditional use approval by the ZBA is required.
- 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 Zoning Ordinance but are otherwise lawfully existing.

- Section 4.6 of the Zoning Ordinance prohibits construction of more than one principal building (not including an accessory dwelling unit or accessory structure) on an undivided lot unless any additional principal buildings (and any accessory buildings) are positioned such that the lot can be subdivided in accordance with all applicable Town and State regulations.

### **III. Findings and Conclusions**

#### **A. Pomfret Zoning Ordinance**

- Installation of the trailer meets the applicable general standards in Section 4.1 of the Zoning Ordinance, including setbacks, maximum height and access to the public right-of-way.
- Upon satisfaction of the condition listed in Section V.B below, installation of the trailer will meet the applicable conditional use approval standards in Section 4.2 of the Zoning Ordinance. In particular, installation of the trailer will not meaningfully increase the demand on town services or facilities nor, upon satisfaction of the condition listed in Section V.B below, create an undue adverse effect or change the character of the area.
- The standards listed in Section 4.4 and Article 5 of the Zoning Ordinance are not applicable to the work described in this Application.
- The ZBA concludes it is more likely than not the Applicant could subdivide their parcel such that the newly installed trailer would occupy a separate lot consistent with Town and State regulations, and as required by Section 4.6 of the Zoning Ordinance. The existing +/- 5-acres lot is more than double the 2-acre minimum lot size. Moreover, it appears technically possible that separate water and driveway access could be added while still meeting setback and other applicable requirements for subdivided lots.

#### **B. Failure to Timely Obtain Permit**

In the Town of Pomfret, if a use, development or structure is not exempt from the Zoning Ordinance, a permit must be obtained before any such use or development may commence, and before any such structure may be built. Failure to do so is a violation subject to the enforcement actions and penalties described in these ordinances.

Here the trailer was installed before the Application was submitted and a permit issued, in violation of the Zoning Ordinance. The ZBA understands that the Applicant initially (and erroneously) believed the trailer to be an "accessory dwelling unit" and that such structures do not require a permit (this is also incorrect). Once the Applicant was informed by the Zoning

Administrator that the trailer was not an accessory dwelling unit (due to its size and other features) and that a permit was required, the Applicant submitted an application for the same.

It is regrettable the Applicant was not aware of the need for a permit before installing the trailer. This has put the ZBA in the difficult position of having either to require the Applicant to remove and/or relocate the trailer at great expense or to authorize a permit, but without affording the community an opportunity to review and comment upon the Application before work had begun.

The ZBA has reluctantly concluded that the better of the two options is to authorize the permit despite the Applicant's failure to undergo the required prior review. We note, however, that the burden created by the screening condition in Section V.B below might have been lessened or avoided altogether had a permit been sought beforehand.

#### **IV. Decision**

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

- A. Conditional use approval is **granted** for installation of the trailer and a permit is **authorized** for such use in such location

#### **V. Conditions and Limitations**

This Decision is subject to the following conditions and limitations:

- A. Installation of the trailer and related work shall conform in all material respects with the Application materials including the Applicant's submissions, plans, written representations to the ZBA, and testimony as reflected in the Minutes, except as expressly modified herein. Any change to the foregoing shall require further review and approval by the ZBA under the then applicable regulations.
- B. The Applicant shall take all reasonable steps to screen the trailer as required by Section 4.2(20) of the Zoning Ordinance. At a minimum, such screening shall include trees or other vegetation that interrupt the trailer's façade, visually reduce its scale and bulk, and integrate the site into the surrounding landscape. Vegetation shall be diversified for sufficient screening that is effective year-round. The ZBA encourages the Applicant to consult with abutters Craig MacRae and Valerie Ritter, Ronald and Sally Weglarz to establish mutually agreeable screening.
- C. The subdivision discussion in Section 3.A of this Decision is included solely for the purpose of evaluating the Application under Section 4.6 of the Zoning Ordinance. By acceptance of this Decision and the approval granted herein, Applicant for itself and its successors and assigns acknowledges and agrees that any future

application to subdivide the Applicant's lot will be considered de novo and will be subject to all applicable regulations at the time such application is made.

- D. 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.

\* \* \* \* \*

This Decision approved at Pomfret, Vermont, as of this 20 day of January, 2021.



Alan Blackmer, chair  
Zoning Board of Adjustment

ZBA members Alan Blackmer, Benjamin Brickner, Phil Dechert, Shaun Pickett and Seth Westbrook voted in the affirmative.

**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.