

TOWN OF POMFRET
Zoning Board of Adjustment

Minutes and Memorandum of Decision

Permit Application: #ZP20-33

Property Address: Log Cabin Road Bridge, South Pomfret

Parcel No.: 0101/0103/0500-A/0105-A/0105-B

Parcel Size: N/A

Property Owners: Kristen Maxham, Juan Florin, Chippers, and Jason Eaton
Log Cabin Road
Woodstock, Vermont 05091

Applicant: Steve Johnson, Barnard Excavation and Logging Inc.
PO Box 299
Barnard, Vermont 05031
Email: [on file]

I. Introduction and Procedural History

A. Application

Kristen Maxham, Juan Florin, Chippers, and Jason Eaton are seeking approval for the construction of the Bridge to replace the failed bridge at Log Cabin Road.

The Application dated October 7, 2020 was referred to the Zoning Board of Adjustment (ZBA) for conditional use review by the Zoning Administrator (ZA) on October 20, 2020. The Application and all supporting documents are on file with the ZA.

On November 19, 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: Kristen Maxham, Juan Florin, Jason and Jody Eaton, William Russell Jr. U.T.A., Peter and Melissa Gebhardt, Cama Family Limited Partnership, Stephen and Tanya Oblak, Coleman and Cecelia Hoyt, Joel and Kimberly Carey, and Windsor Central MUUSD/Prosper Valley School.

B. Site Visit and Public Hearing

Following a site visit at the property on December 10, 2020 at 3:30pm, the ZBA considered the Application at a public hearing on December 10, 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), Steve Johnson (representing the Applicants), and Cecelia Hoyt (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), John Broker-Campbell (Regional Flood Plan Manager), Lorraine Atwood and Charlie Jones, Jason Eaton (Abutter/Applicant), Valerie Ritter, Steve Johnson (Representing the Applicant), and Hugh Shackleton (Abutter/Applicant).
- The meeting was opened at 6:10pm 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. Steve Johnson, Jason Eaton and Hugh Shackleton were sworn in for interested party status. Cecelia Hoyt was granted interested party status based on her verbal request at the site visit and previous request made to the ZA.
- During the hearing the following testimony was heard from Steve Johnson, John Broker-Campbell, Jason Eaton and Hugh Shackleton:
 - The Bridge is located in the special flood hazard area (SFHA) of Barnard Brook.
 - No base flood elevation (BFE) has been determined at the subject location.
 - The new Bridge was a replacement for an existing bridge that had failed.
 - Steve Johnson stated that in his conversation with Scott Jensen (State Stream Alteration Permit Specialist) the State required specifications for the Bridge to be eight feet higher than the water. The stream channel is very restricted. This height is required to replace the Bridge to adhere to current standards.
 - The Bridge was engineered with steel beams which consisted of five 2 foot steel I-beams, H2O rated deck caps to go across the beams. Sixty concrete blocks (thirty per side) were used to construct the abutments. Three-quarter inch stone was placed under the bed.
 - John Broker-Campbell, Regional Floodplain Manager, stated that he was the technical assistant to the town and doesn't have any regulatory review to the board. He was present only to provide technical guidance to the ZBA.
 - Phil Dechert asked Jason Eaton if there is a plan to put railings on the sides of the Bridge. Jason responded that for snow plowing reasons the land owners did not want railings.

- Since no BFE has been provided, there is not sufficient evidence to approve the Bridge construction. The hearing was adjourned to Tuesday, December 22, 2020 at 6pm.
- The ZBA Hearing on December 22, 2020 was opened at 6pm by Alan Blackmer (Chair). Present were ZBA member Benjamin Brickner, Karen Hewitt Osnoe (ZA), Hugh Shackleton (Applicant) and Jason Eaton (Applicant). The ZBA did not have a quorum to continue the hearing. The hearing was adjourned March 9, 2021 at 6pm to afford the Applicant an opportunity to obtain the BFE.
- The ZBA Hearing on March 9, 2021 was opened at 6pm by Alan Blackmer (Chair). Present were ZBA members Benjamin Brickner, Shaun Pickett and Seth Westbrook, as well as Karen Hewitt Osnoe (ZA), Hugh Shackleton (Applicant) and Jason Eaton (Applicant). There was a miscommunication for the need to determine the BFE. Hugh Shackleton and Jason Eaton would retain Jonathan Harrington of Harrington Civil Engineers, Inc. to obtain the BFE. The hearing was adjourned to April 8, 2021 to afford the Applicant an opportunity to obtain the BFE.
- The ZBA Hearing on April 8th, 2021 was opened by Alan Blackmer (Chair) at 7:10pm. Present were ZBA members Benjamin Brickner, Phil Dechert, Seth Westbrook and Shaun Pickett. Also present were Karen Hewitt Osnoe (ZA) and Hugh Shackleton (Applicant). Hugh Shackleton stated that Jonathan Harrington will email final determination on April 12, 2021 to Hugh Shackleton who will forward to Karen Hewitt Osnoe (ZA). Preliminary BFE was calculated at 0.4 feet or 5 inches above the bottom of the support I-beam.

II. Findings of Fact

- The Bridge is located in the SFHA of Barnard Brook.
- The applicable SFHA is designated "Zone A" (1-percent-annual-chance flood event).
- No regulatory floodway has been designated in the Town of Pomfret.

III. Applicable Regulations (the *Pomfret Flood Hazard Area Regulations*)

- A permit is required by the Pomfret Flood Hazard Area Regulations (the Flood Regulations) for all proposed development, including filling, grading and excavation in an SFHA. [Section IV]
- If the proposed development is neither exempt from the Flood Regulations under Section IV.A, nor eligible for an administrative permit from ZA under Section IV.B, conditional use approval by the ZBA is required under Section IV.C, which directs the ZBA to ensure the applicable standards in Section VII have been met and that potential flood damage has been minimized.

- If no regulatory floodway has been designated, the requirements of Section VI.C also apply.

IV. Conclusions of Law

A. Pomfret Flood Hazard Area Regulations

The Bridge has entailed a man-made change to improved or unimproved real estate and is therefore “development” governed by the Flood Regulations. The Bridge is neither exempt from the Flood Regulations nor eligible for an administrative permit from ZA. Therefore, conditional use approval by the ZBA is required and the applicable standards in Section VII must be met. And because no regulatory floodway has been designated in the Town of Pomfret, the requirements of Section VI.C also apply. In summary, the following standards apply:

- Potential flood damage of the Bridge is minimized;
- The cumulative effect of the Bridge, together with all other existing development and anticipated development will not increase the water surface elevation of the base flood at any point within the community; and
- The Bridge is at least one foot above BFE and able to withstand a 100-year event without failing.

Based on the Applicant’s submissions, plans, and testimony, and observations made during the site visit, the ZBA concludes that the development occurring in the SFHA consists only of a bridge.

- The Existing Condition and Base Flood Elevation Plan for Cabin Hill Drive Bridge (the Plan) dated 4/13/2021 by Harrington Civil Engineers, Inc. is based on a field survey performed by Harrington Civil Engineers, Inc. (HCEI) on March 31, 2021 using a Nikon Total Station and Supplemental Lidar Contours.
- The Plan states that the bottom of the support I-beam has an elevation of 706.1’ and the Top of Concrete deck elevation of 708.7’.
- Therefore, the Plan shows that the bottom of the support I-beam is 0.05’ or 1 inch above BFE and the top of the concrete deck is 2.65’ or 2 feet 8 inches above BFE.

The bottom of the support I-beam is less than one foot above BFE, the top of the concrete deck is more than one foot above BFE.

The ZBA interprets the relevant provisions of the Flood Regulations to advance policy two goals: that development in an SFHA (1) not enhance upstream or downstream flooding risks, nor (2) pose a risk to public safety, infrastructure or emergency services during flood events.

For this reason, the ZBA concludes that the relevant standards here are whether the Bridge (1) can withstand a 100-year flooding event without failing and (2) facilitates public safety emergency services during flood events. Based on the substantial nature of the new Bridge construction and location of the traveled surface more than one foot above BFE, the ZBA concludes that both standards are met here.

B. Failure to Timely Obtain Permit

In the Town of Pomfret, if a use, development or structure is not exempt from both the Pomfret Zoning Ordinance and the Flood Regulations, 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 Bridge was substantially upgraded and complete before the Application was submitted and a permit issued, in violation of the Flood Regulations. However, the ZBA appreciates that the sudden failure of the old bridge created an emergency need for its swift replacement. As the violation was largely unavoidable and the potential harm to the community ultimately negligible, the ZBA concludes that this Decision should not be affected and that no further action should be taken as a result.

V. Decision

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. Conditional use approval is **granted** for the portion of the Bridge in the SFHA and a permit is **authorized** for such use in such location.

VI. Conditions and Limitations

This Decision is subject to the following conditions and limitations:

- A. The Bridge and related work shall conform in all material respects with the application materials including the Applicant's submissions, plans (including the Plan prepared by Harrington Civil Engineers, Inc.), written representations to the ZBA, and testimony as reflected in the Minutes, except as expressly modified herein. Any material changes to the foregoing shall require further review and approval by the ZBA under the then applicable regulations.
- B. 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.

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This Decision approved at Pomfret, Vermont, as of this 22 day of May, 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.