

TOWN OF POMFRET
Zoning Board of Adjustment

Minutes and Memorandum of Decision

Permit Application: #ZP21-05
Property Address: 922 Barber Hill Road, South Pomfret
Parcel No.: 0508
Parcel Size: 10.00 +/- acres

Property Owners: Hunnewell Ogden Irrevocable Trust
78 Fernwood Road
Chestnut Hill, MA 02467

Applicant: Hunnewell Ogden Irrevocable Trust

NOTICE REGARDING 45-DAY PERIOD UNDER 24 V.S.A. 4464(b)(1)

As further described below, the Zoning Board of Adjustment's (ZBA) hearing on the above-captioned matter was closed on May 4, 2021. Pursuant to 24 V.S.A. 4464(b)(1), the ZBA shall "issue a decision within 45 days after the adjournment of the hearing, and failure [to do so] shall be deemed approval and shall be effective on the 46th day."

This document is dated July 7, 2021 and the 45-day period described above ended on June 17, 2021. As such, the Applicant's permit was deemed approved and effective on June 18, 2021.

The ZBA nonetheless is publishing these Minutes and Memorandum of Decision to create a written record of the procedural history, facts and analysis in this matter. The "Decision" in Section V below and "Conditions and Limitation" in Section VI below are what the ZBA would have decided on the Application had this document been timely issued.

I. Introduction and Procedural History

A. Application

Hunnewell Ogden Irrevocable Trust is seeking approval for the construction of a new driveway to the single family residence at 922 Barber Hill Road. The project includes the construction of a bridge across Cloudland Brook. The bridge construction will be cast-in-place concrete abutments supporting steel beams and a wood deck.

The Application dated March 2, 2021 was referred to the ZBA for conditional use review by the Zoning Administrator (ZA) on April 12, 2021. The Application and all supporting documents are on file with the ZA.

On April 12, 2021, notice of a public hearing was posted at the Town Clerk's Office, North

Pomfret Post Office and on the Pomfret Vermont website. On April 15, 2021, notice was published in the *Vermont Standard*. The ZA mailed the notice to the following property owners abutting the subject property: Kathleen and Robert Davis, Thomas P. Wright Trustee and Richard and Gail Gardner.

B. Site Visit and Public Hearing

Following a site visit at the property on May 4th, 2021 at 5:00pm, the ZBA considered the Application at a public hearing on May 4th, 2021 at 6pm via Zoom meeting.

- Present at the site visit were the following members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, and Phil Dechert. Also present were Karen Hewitt Osnoe (ZA), Chuck Washburn (representing the Applicants), Cyrus Benoit and Joleigh Hewitt.
- Present at the hearing were the following members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, and Phil Dechert. Also present were Karen Hewitt Osnoe (ZA), Kathy Davis (Abutter), Emily Grube and John Svagzdys of DeWolf Engineering Associates (representing the Applicant).6.22
- The meeting was opened at 6:05pm 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. Kathy Davis and John Svagzdys were sworn in for interested party status.
- During the hearing the following testimony was heard from John Svagzdys:
 - The bridge is located in the special flood hazard area (SFHA) of Cloudland Brook.
 - Base flood elevation (BFE) has been determined at the subject location.
 - The new bridge is for the relocation of a driveway on the property.
 - The bridge will slope away from the road off the bridge to allow water runoff.
 - Pressure treated wood decking with steel beams.
 - Bottom supports of the bridge is 2 feet above BFE.
- Applicant has obtained an access permit for the proposed bridge location pursuant to its Application for a Driveway or Approach Road Access Permit dated March 2, 2021, and approved by the Selectboard on April 26, 2021 (the "Access Permit").
- The meeting was closed at 6:22 pm by ZBA chair Alan Blackmer

II. Findings of Fact

- The bridge is located in the SFHA of Cloudland 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 Hydrology and Hydraulics Summary for Proposed Cloudland Brook Crossing by Fitzgerald Environmental Associates, LLC dated February 2, 2021 shows that the BFE at the proposed bridge location is 994.6 feet.
- The Driveway Plan & Profile (Sheet C2.01) for Hunnewell Residence Bridge by DeWolfe Engineering Associates dated February 2, 2021 shows that the bottom of the proposed bridge beam would be at 996.5 feet, or 1.9 feet above BFE.

The ZBA interprets the relevant provisions of the Flood Regulations to advance two policy 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 proposed bridge construction and its elevation of nearly two feet above BFE, the ZBA concludes that both standards are met here.

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, 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. Removal of the culvert at the original access to the property once the new bridge

* Please see "Notice Regarding 45-Day Period" above regarding the effectiveness of this Section V.

† Please see "Notice Regarding 45-Day Period" above regarding the effectiveness of this Section VI.

is completed, as required by the Access Permit.

- C. 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 7th day of July, 2021.

Alan Blackmer

Alan Blackmer, chair
Zoning Board of Adjustment

ZBA members Alan Blackmer, Benjamin Brickner and Phil Dechert voted in the affirmative.