

**TOWN OF POMFRET
Zoning Board of Adjustment**

Minutes and Memorandum of Decision

Permit Application: #ZP22-35
Property Address: 35 Wayside Road, Pomfret
Parcel No.: 4802
Parcel Size: 2.19 +/- acres

Property Owner: ABRA LLC
35 Wayside Road
Pomfret, Vermont

Applicant: Abracadabra Holding Co.
35 Wayside Road
Pomfret, Vermont

I. Introduction and Procedural History

A. Application

Abracadabra Coffee Co., a Vermont corporation, is seeking conditional use approval to include the sale of prepared coffee, baked goods, retail coffee and related merchandise to the public within the hours of 7 am to 5 pm, 7 days a week at their property at 35 Wayside Road. Also included in the application is conditional use approval for two business signs in the same locations as the prior property owner's signs, and limited outdoor and indoor events for private functions. The uses described in this paragraph are referred to herein collectively as the Contemplated Uses.

The Zoning Permit Application ZP22-35 (the Application) dated October 10, 2022, was referred to the Zoning Board of Adjustment (ZBA) for conditional use review by the Zoning Administrator (ZA) on October 28, 2022. The Application and all supporting documents are on file with the ZA.

On October 28, 2022, notice of a public hearing was posted at the Town Clerk's Office, Teago General Store and on the Pomfret, Vermont website (pomfretvt.us). On October 30, 2022, notice was published in *The Valley News*. The ZA notified the property abutters of the site visit and hearing.

B. Site Visit and Public Hearing

Following a site visit at the property on November 14th, 2022, at 4:00 pm, the ZBA considered the Application at a public hearing on November 14th, 2022 at 5:00 pm.

- Present at the site visit were all members of the ZBA: Alan Blackmer (Chair),

Benjamin Brickner, Phil Dechert, Shaun Pickett, Seth Westbrook. Also present were Karen Hewitt Osnoe (ZA), Sarah Yetter (Applicant), Antoinette Hunt (Applicant), Clint Hunt (Applicant), Jack Willey, Bailey Markwell (abutter) and Christopher Markwell (abutter).

- Present at the hearing were the following members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, Shaun Pickett, Seth Westbrook. Also present were Karen Hewitt Osnoe (ZA), Sarah Yetter (Applicant), Antoinette Hunt (Applicant), Clint Hunt (Applicant), Jack Willey, Bailey Markwell and Christopher Markwell.
- The meeting was opened at 5:05 pm 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. Sarah Yetter, Clint Hunt, Jack Willey and Antoinette Hunt were sworn in by Alan Blackmer (ZBA Chair). Bailey and Chris Markwell were granted interested party status.
- During the hearing the following testimony was heard from Clint Hunt, Antoinette Hunt and Sarah Yetter on behalf of the Applicant:
 - Abracadabra Coffee Co. intends to move their retail business from their existing Woodstock location.
 - Antionette stated that they would like to put up a sign at the road to go with the coffee and baked goods business with the intention of an expansion of baked goods that will be offered. The roadside sign would be in the same location as the sign for the former Riverbend Home and Garden Supply Company.
 - There is space for overflow parking and there are no intentions for additional exterior lighting. There will be outdoor seating adjacent to the building pending the redesign of the current septic system.
 - Any ambiance music for outdoor seating will be kept at a reasonable low level via a Bluetooth speaker.
- Shaun moved and Seth seconded that the meeting be adjourned. Unanimous. The meeting was adjourned at 5:53 pm.

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.
- The change in use to add a café for on-premises sales and on-premises seating 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 of the Zoning Ordinance. Additional limitations in Section 4.4 apply to “Non-Conforming Structures” that do not conform to the Zoning Ordinance but are otherwise lawfully existing.

III. Findings and Conclusions

A. Pomfret Zoning Ordinance

- Subject to the conditions and limitations provided in Section V below, the Contemplated Uses will meet the applicable general standards in Section 4.1 of the Zoning Ordinance, including setbacks, maximum height, signs, parking, outdoor lighting and reflection, and access to the public right-of-way.
- Subject to the conditions and limitations provided in Section V below, the Contemplated Uses will meet the applicable conditional use approval standards in Section 4.2 of the Zoning Ordinance.
- As all other uses (parking, etc.) and the structure itself are lawfully existing as of the date hereof, the provisions of Section 4.4 of the Zoning Ordinance are applicable and may continue indefinitely subject to the conditions provided in Section 4.4.2 of the Zoning Ordinance.

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 the sale of prepared coffee, baked goods, retail coffee and related merchandise to the public, a roadside business sign, a business sign on the building, and limited outdoor and indoor events for private functions, and a permit is **authorized** for such uses in such locations.

V. Conditions and Limitations

This Decision is subject to the following conditions and limitations:

- A. The Contemplated Uses approved by this Decision 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 sale of prepared coffee, baked goods, retail coffee and related merchandise to the public is limited to the hours of 7 am to 5 pm, 7 days a week (special events excepted).
- C. Combined indoor and outdoor seating is not to exceed 30 patrons during normal business hours (special events excepted).
- D. Special events are limited to 12 per calendar year with up to 65 patrons per event. All activity associated with such events shall cease no later than 9 pm. For calendar year 2022 only, the number of special events is limited to 3.
- E. Placement of one sign up to 16 square feet, non-illuminated is permitted at the side of the road on the existing roadside structure. Placement of one sign up to 16 square feet, non-illuminated is permitted on the building. Placement of signage otherwise shall comply with Section 4.1(10) of the Zoning Ordinance.
- F. Any change in existing exterior lighting shall comply with Section 4.1(14) of the Zoning Ordinance.
- G. All Conditions and Limitations of the Zoning Board of Adjustment Minutes and Memorandum of Decision ZP22-05 dated May 5th, 2022, remain in full force and effect unless expressly modified herein.
- H. The Contemplated Uses approved by this Decision 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.

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This Decision approved at Pomfret, Vermont, as of this 1st day of December 2022.



Alan Blackmer, chair
Zoning Board of Adjustment

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